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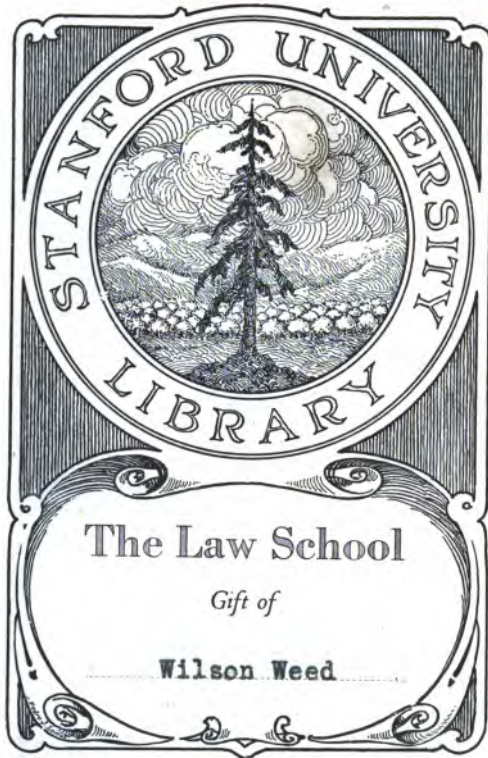
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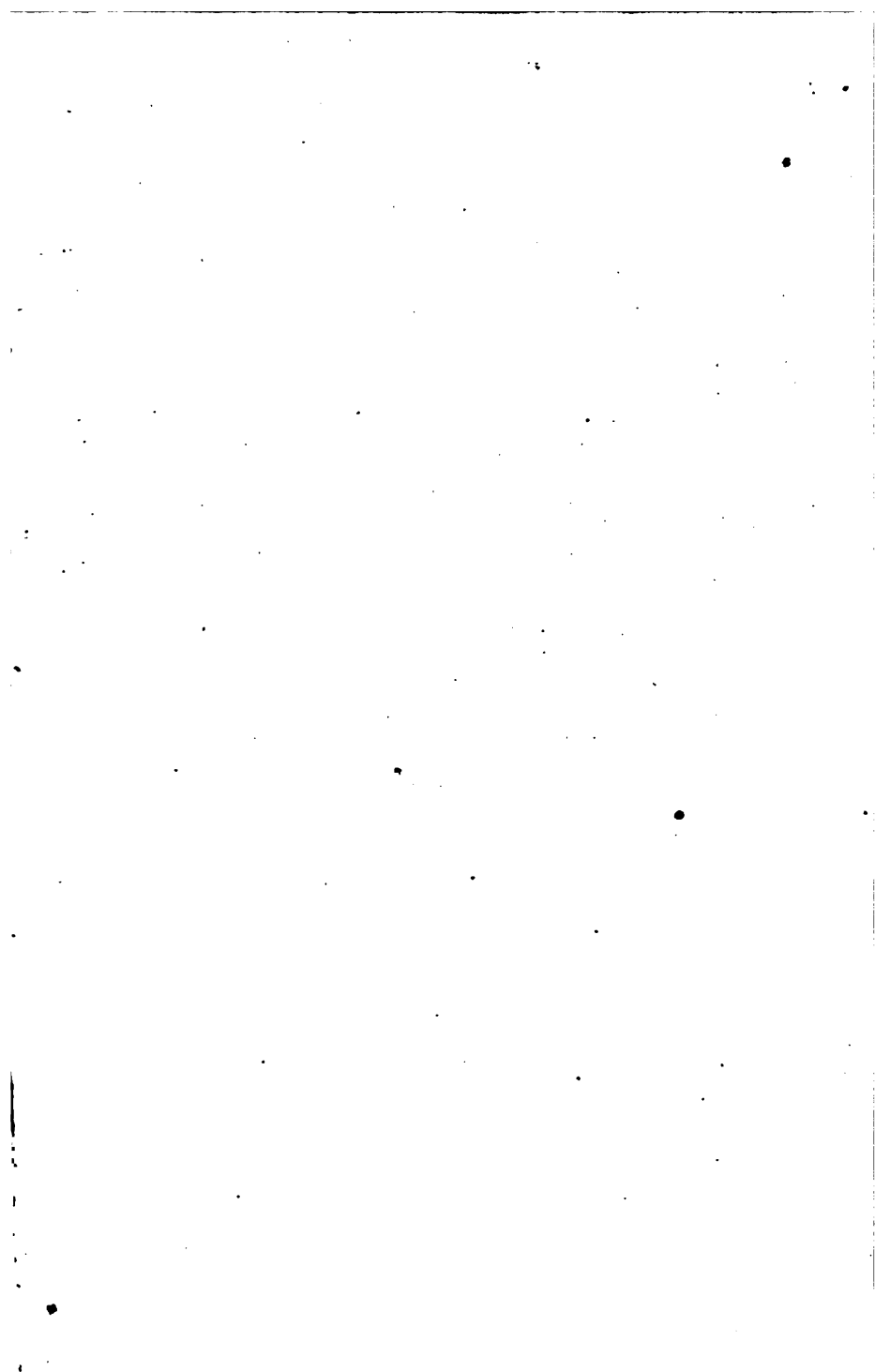


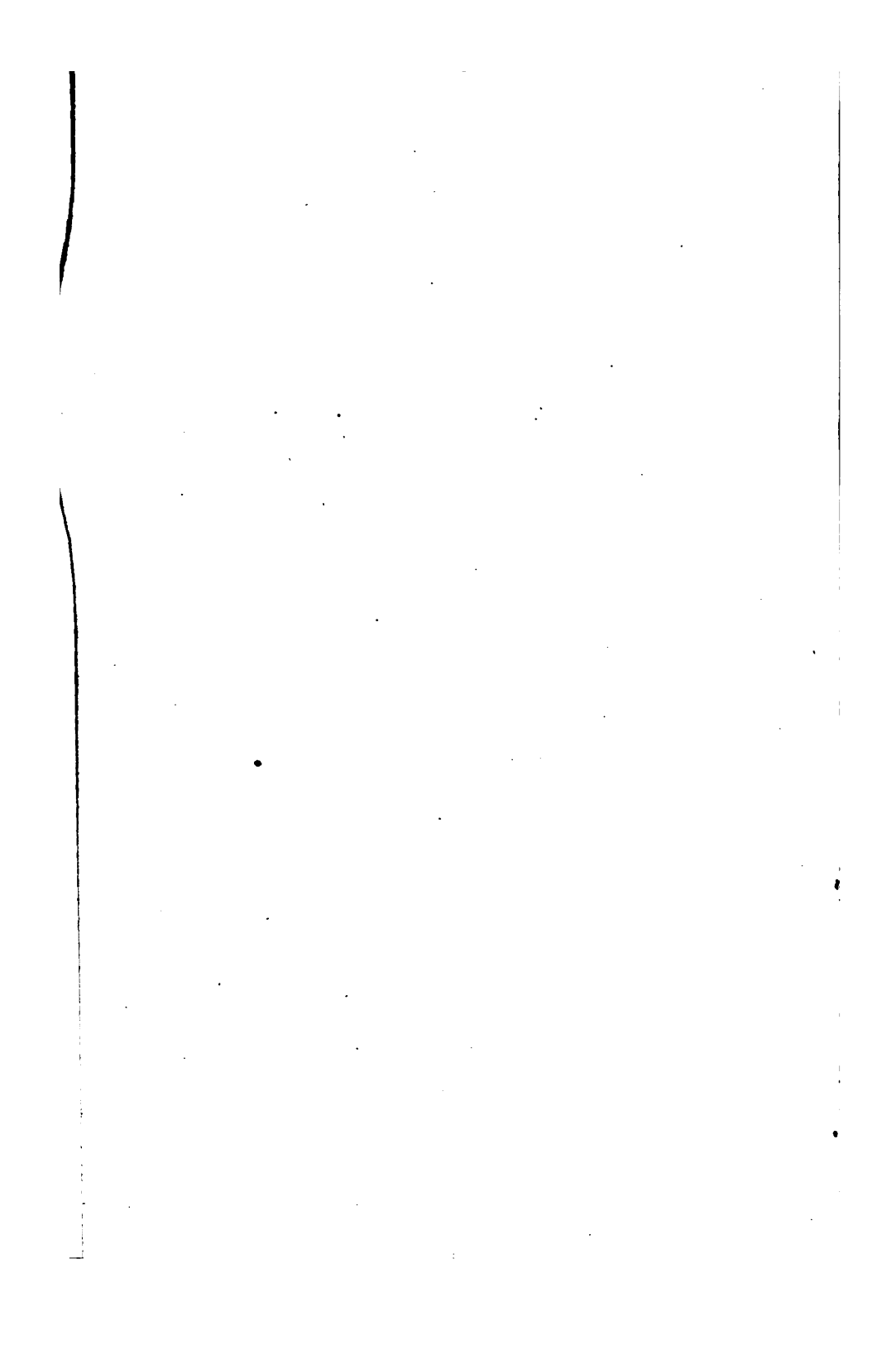
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EQUITY PRACTICE
IN THE
UNITED STATES CIRCUIT COURTS.

A COMPILATION
OF THE
PROVISIONS GOVERNING THE SAME AS FOUND IN
THE STATUTES OF THE UNITED STATES,
RULES IN EQUITY AND DECISIONS
OF THE SUPREME COURT.

BY
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DISTRICT OF IOWA.

STEREOTYPED BY
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THE following compilation is not intended to be a treatise upon equity practice at large, but only to bring together in compact form the provisions found in the rules in equity prescribed by the supreme court, in the sections of the statutes of the United States, and in the decisions of the supreme court, which recognize, prescribe or explain the steps ordinarily required to be taken in carrying through suits in equity in the circuit courts of the United States. The purpose sought to be achieved is the furnishing a manual for ready reference for the busy practitioner and a guide to the novice, explaining the mode of procedure in bringing, preparing for hearing, and submitting suits in equity, including the means employed for the enforcing, reversing or appealing from final decrees.

METHOD OF PROCEDURE
IN
EQUITY CAUSES
IN
THE UNITED STATES CIRCUIT COURTS.

CHAPTER I.

THE CIRCUIT COURT AS A COURT OF EQUITY — JURISDICTION — RULE DAYS — MOTIONS AND ORDERS GRANTABLE BY CLERK OR JUDGE.

I. With the exception of cases to which a state is a party, or which affect ambassadors, foreign ministers, their domestic servants, consuls or vice-consuls, of which, by section 2, article 3, of the constitution and section 687 of the Revised Statutes, original jurisdiction is conferred upon the supreme court, and of cases arising under the revenue, national banking and bankrupt laws, and the few other special matters enumerated in section 563 of the Revised Statutes, in which jurisdiction, exclusive or concurrent, is conferred upon the district courts, the original jurisdiction of causes in equity, cognizable in the courts of the United States, is vested in the circuit courts.

Revised Statutes, section 629; 18 Statutes at Large, 470; 25 Statutes at Large, 433. -

II. The forms of process used and the modes of procedure had in suits in equity in the courts of the United States are according to the principles, rules and usages obtaining in courts of equitable jurisdiction, and especially in the high court of chancery in England, subject to alteration or addition by statute or by rules of courts duly adopted; power being given to the supreme court to adopt from time to time general rules for the regulation of the equity practice in all the courts of the United States, under which authority a series of rules have been promulgated, known as *The Rules of Practice for the Courts of Equity of the United States*.

Revised Statutes, sections 913, 917. Rule 90.

III. The circuit courts, as courts of equity, are always open for the purpose of filing bills, answers and other pleadings, for the issuance of process and for the making all interlocutory motions, orders and rules, and the directing such other proceedings as may be necessary to prepare causes for hearing upon their merits.

Rule 1.

IV. The first Monday of each month is a rule day, on which days the clerk is required to be in attendance at his office for the purpose of receiving, entering and disposing of all motions, rules, orders and other proceedings grantable as a matter of course.

Rule 2.

V. All motions and applications filed in the clerk's office, for the issuing of subpoenas for de-

pendants, subpoenas for witnesses, for filing bills, answers, exceptions, pleas, demurrers and other pleadings; for making amendments to bills before answer, plea or demurrer thereto; for making amendments to answers before replication thereto; for taking bills *pro confesso* for want of entry of appearance, or for want of a pleading; for filing exceptions and all other proceedings which do not require action by the court or judge thereon, are deemed matters grantable of course.

Upon cause shown, proceedings had as matter of course may be altered, suspended or rescinded by a judge of the court.

Rule 5.

VI. Either of the judges of the court may at any time at chambers, or on the rule days at the clerk's office, make and direct all such interlocutory orders, rules and other proceedings as may be needed to prepare causes for hearing upon their merits.

This rule is intended to apply to such proceedings as are not grantable as a matter of course by the clerk, but which require the action of the court or a judge thereon.

In some instances the order, leave or rule may be granted by the court or judge without notice to the adversary party of such application.

In others, notice must be given.

Where the rules provide that notice shall be given of an application for a certain order or other proceeding, such notice is essential,—and unless a different time is assigned by a judge, the same will be for

hearing on the rule day next after that on which the motion is made.

Where the rules provide that a court or judge may grant a named order or leave, but is silent in regard to notice, then the same may be granted without notice other than the entry upon the order book by the clerk, although the court or judge may, at discretion, require notice to be given.

Application for orders, rules and other proceedings may be made orally or in writing.

Generally, the better practice is to prepare the application in writing and submit or send it to the judge, asking him to indorse the required order or leave thereon, or, if notice is required of the application, to indorse thereon the time and place of hearing the same, of which notice must be given to the adversary party or his solicitor.

Rule 6.

VII. It is the duty of the clerk to keep an order book, in which is entered, on the day they are made, all motions, rules, orders and other proceedings made and directed at chambers or on the rule days, and, except in cases where personal or other notice is specially required or directed, the entry in such order book is notice to the parties and their solicitors of such motion, order, rule or other proceeding.

Rule 4.

CHAPTER II.

THE BILL, ITS FORM AND REQUISITES.

VIII. The initial step in bringing a suit in equity is the filing of the bill, the introductory part of which should be substantially in the following form:

In the Circuit Court of the United States in and for the District of ——. — Term, 18—.

A. B.	}	Equity.
v.		
C. D. and E. F.		

To the Judges of the Circuit Court of the United States for the — District of —:

A. B., of —, and a citizen of the state of —, brings this his bill against C. D., of —, and a citizen of the state of —, and E. F., of —, and a citizen of the state of —. And thereupon this complainant avers and says, etc.

Rule 20.

IX. For jurisdictional purposes a corporation is deemed to be a citizen of the state under whose laws it is created and organized. When, therefore, a corporation is a party, the corporate name should be set forth, followed by the averment that the same "is a corporation created and organized under the laws of the state of —."

R. R. Co. v. Harris, 12 Wall., 65; Muller v. Dows, 94 U. S., 444; Ex parte Schollenberger, 96 U. S., 369; Penna Co. v. R. R. Co., 118 U. S., 290; Goodlet v. R. R. Co., 122 U. S., 391.

X. Owing to the fact that the courts of the United States are of limited jurisdiction, it is neces-

sary that the fact of jurisdiction should be shown upon the face of the record.

Therefore, whether jurisdiction in the federal court of a given cause is claimed to exist by reason of diverse citizenship of the adversary parties, or by reason of the subject-matter of the controversy, the facts relied on as grounds of jurisdiction should be made clear upon the face of the bill, or the same will be demurrable, or may be dismissed by the court of its own motion.

Hornthal v. Collector, 9 Wall., 560; *Godfrey v. Terry*, 97 U. S., 171; *Mansfield R. R. v. Swan*, 111 U. S., 379; *Hancock v. Holbrook*, 112 U. S., 229; *Ins. Co. v. Rhoads*, 119 U. S. 237; *Everhart v. Huntsville College*, 120 U. S., 223.

XI. By section 16 of the judiciary act of 1789 it was declared that

“Suits in equity shall not be sustainable in either of the courts of the United States in any case where a plain, adequate and complete remedy may be had at law.” The same provision is re-enacted in section 723 of the Revised Statutes.

Therefore, to sustain the right to proceed in the circuit court as a court of equity, it must appear in the given cause that from the nature of the controversy, or of the relief sought, a plain, adequate and complete remedy at law does not exist, according to the remedies at law in existence when the act of 1789 was adopted or such as may have been since provided by act of congress.

Dade v. Irwin, 2 How., 383; *Parker v. Winnipisiogee Co.*, 2 Black, 545; *Watson v. Sutherland*, 5 Wall., 74; *Barber v. Bar-*

ber, 21 How., 582; Thompson v. R. R. Co., 6 Wall., 134; Hayward v. Andrews, 106 U. S., 672; N. Y. Co. v. Memphis Water Co., 107 U. S., 205; Ellis v. Davis, 109 U. S., 485; Litchfield v. Ballou, 114 U. S., 190; Thompson v. Allen Co., 115 U. S., 550; McConihay v. Wright, 121 U. S., 201.

XII. The facts constituting the cause of action should be set forth concisely, yet clearly, avoiding all unnecessary recitals of deeds, documents, contracts, or other instruments *in hæc verba*, or of matters of mere evidence.

It is not necessary to include a clause averring a confederacy between the defendants to injure or defraud the complainant, unless such confederation constitutes, in the particular case, one of the grounds relied upon by complainant for the relief sought; nor a clause setting forth the matters or excuses which the defendant is supposed to rely upon by way of defense; but the complainant may, when desirable, state in his bill any matter which he may suppose the defendant will rely upon, and avoid the effect thereof by making proper counter averments thereto; nor a clause averring that the acts complained of are contrary to equity, and that complainant is remediless at law.

If the facts averred in setting forth the cause of action show a case of equitable cognizance, then a formal averment that the party is without remedy at law is merely surplusage; whereas if the facts averred do not show that the party has no adequate and complete remedy at law, then a formal averment to that end is ineffectual to show the

fact, being the averment of a mere conclusion of law.

Rule 21.

XIII. If any persons, other than those named in the bill as defendants, should appear to be necessary or proper parties, the reason why they are not made parties should be averred; as, for instance, that they are without the jurisdiction of the court, or cannot be joined without ousting the jurisdiction as to the other parties.

If desired, the bill may contain a prayer that if the absent parties should come within the jurisdiction, process may issue to bring them into the suit.

Rule 22.

XIV. If a preliminary injunction, writ of *ne exeat* or other special process or order pending the suit is sought for, the reasons or grounds upon which the same is asked should be set forth, with a special prayer for the issuance of such process.

Rule 21.

XV. The bill must also contain a prayer for the issuance of the process by subpoena, in which prayer must be included the names of all the defendants named as such in the introductory part of the bill.

If any of the defendants are minors, or otherwise under guardianship or incompetent, the fact should be stated, in order that proper service may be had and such other action be taken as is necessary for the protection of the rights of such party.

The bill concludes with the prayers for relief, which must include the special relief sought by complainant, and also a prayer for general relief. There must be annexed to the bill the signature of one of the counsel for complainant, which signing is deemed to be an affirmation on his part that, upon the instructions given to him and the case laid before him, there is good ground for the suit in the manner in which it is set forth in the bill.

Rules 23, 24.

XVI. Since the adoption of the amendment to rule 40, declaring that it shall not be necessary to interrogate a defendant specially upon any statement in the bill, unless complainant desires to do so for the purposes of discovery, and of the statute permitting and compelling parties in interest to testify as witnesses, the use of special interrogatories as part of the bill as a means of discovery has largely fallen into disuse, rendering it unnecessary to notice the rules regulating the form and particulars thereof, otherwise than by reference to rules 40-44 inclusive.

XVII. If the averments of the bill show that the injuries complained of have been of long standing, so that laches may be imputed to complainant in not sooner moving for the protection of his rights, the facts relied on as excusing the delay should be set forth in the bill, or otherwise it may be attacked by demurrer or plea, or the court may of its own motion refuse to consider the case.

Thus if suit could not be earlier brought by reason of the absence of defendant, or of some disabil-

ity on part of complainant, or because defendant fraudulently kept the facts concealed, or because complainant, without fault, was ignorant of his rights, or if any other reason exists excusing the delay, the facts should be averred in the bill, and thus the apparent laches on part of complainant be explained.

Badger v. Badger, 2 Wall., 87; *Hume v. Beal*, 17 Wall., 336; *Marsh v. Whitmore*, 21 Wall., 178; *Sullivan v. R. R. Co.*, 94 U. S., 806; *Hayward v. Nat. Bank*, 96 U. S., 611; *Speidel v. Henrici*, 120 U. S., 377; *Richards v. Mackal*, 124 U. S., 183.

XVIII. Where one or more stockholders in a corporation bring a bill against the corporation and other parties for the enforcement or protection of rights ordinarily assertable by the corporation as the representative of all the stockholders, on the ground that the corporation fails or refuses to act in the premises, such bill must be verified, and must show that the complainant was a shareholder at the time of the transaction of which he complains, or that his share had since devolved on him by operation of law; that the suit is not collusively brought in the name of the stockholder as a means of conferring jurisdiction on the United States court, and must also set forth with particularity the efforts made by complainant to secure action by the directors or trustees, and if necessary by the shareholders, and the cause of failure in securing action through the corporation.

Rule 94. *Hawes v. Oakland*, 104 U. S., 450; *Huntington v. Palmer*, 104 U. S., 482; *Quincy v. Steele*, 120 U. S., 241.

CHAPTER III.

OF THE PARTIES.

XIX. As to parties, the general rule is that all persons interested in or to be affected by the results of the litigation should be made parties plaintiff or defendant, to the end that the one proceeding and the one decree may settle and adjudicate the entire controversy.¹

Where it appears, however, that one or more of those interested cannot be made parties, by reason of being without the jurisdiction of the court, or for other good reason, or because making them parties would oust the jurisdiction of the court, the cause may proceed without their presence, provided the interest of those made parties is such that the court can consistently hear and determine the issues as to them; but in such cases the decree cannot prejudice the rights of those not made parties.²

So, also, where the parties on either side are very numerous, and cannot, without manifest inconvenience and delay, be all brought in as parties, the suit may proceed if sufficient parties to represent all the adverse interests are brought before the court.³

Where, upon the face of the bill, it appears that persons not made parties are interested in the suit, the reasons why they are not made parties should be set forth in the bill.

If the interest of those not made parties is such that a final decree cannot be entered without injuriously affecting such interest, or leaving the controversy in such condition as may be inconsistent with equity, the court will require such absent parties to be brought in, and if this cannot be done will dismiss the bill.⁴ If doubt exists whether the court will grant a final decree by reason of the absence of parties, the question should, if possible, be presented and settled before incurring the delay and expense of taking testimony.

¹ Russell v. Clark's Ex'r, 7 Cranch, 74; Caldwell v. Taggart, 4 Pet., 190; Shields v. Barrow, 17 How., 130; Williams v. Bankhead, 19 Wall., 563; McArthur v. Scott, 113 U. S., 340.

² Mulligan v. Milledge, 3 Cranch, 220; Elmendorf v. Taylor, 10 Wheaton, 153; Mallow v. Hinde, 12 Wheaton, 193; Payne v. Hook, 7 Wall., 425; Traders' Bank v. Campbell, 14 Wall., 87.

³ Mandeville v. Riggs, 2 Pet., 482; Williams v. Bankhead, 19 Wall., 563.

⁴ Riddle v. Mandeville, 5 Cranch, 322; Russell v. Clark's Ex'r, 7 Cranch, 74; Marshall v. Beverly, 5 Wheaton, 313; Mallow v. Hinde, 12 Wheaton, 193; Barney v. Baltimore, 6 Wall., 280; Bank v. R. R., 11 Wall., 624; Traders' Bank v. Campbell, 14 Wall., 87; Ribon v. R. R., 16 Wall., 446.

XX. Persons incapable of instituting suits for themselves may sue by guardian or *prochein ami*, and a guardian *ad litem* may be appointed by the court or judge to defend on behalf of such incapables.

Rule 87.

XXI. In suits upon joint and several demands, including those against principals and sureties, the

complainant may at his option proceed against one or more of those severally liable.¹

In suits to enforce the execution of the trusts of a will it is not necessary to make the heir at law a party, unless it is desired to establish the will against him.²

Where real estate is vested in trustees by devise, with power to sell and to collect and receipt for the rents and profits, such trustees, for purposes of suit, represent the beneficiaries to the same extent as administrators or executors represent the persons interested in the personal estate, and such beneficiaries, interested in the realty or the rents and profits thereof, need not be made parties unless the court shall so order.³

So, also, where trustees represent the beneficiaries in regard to the general interest in the trust property, so that their acts touching the property bind the beneficiaries, the trustees alone may be made parties to suits affecting the trust property.

¹ Rule 51.

² Rule 50.

³ Rule 49. *Kerrison v. Stewart*, 93 U. S., 155; *Corcoran v. Canal Co.*, 94 U. S., 741; *Shaw v. R. R. Co.*, 100 U. S., 605; *Richter v. Jerome*, 123 U. S., 233.

CHAPTER IV.

MESNE PROCESS — ISSUANCE — SERVICE.

XXII. The ordinary process issued to bring the defendants into court is a subpoena, which is issued by the clerk upon the filing of the bill in his office, and at the option of the complainant may be made returnable at the first or second rule day next ensuing, occurring after twenty days from date of the issuance of the process.

If there are more than one defendant, separate subpoenas for each, or a joint subpoena for all, may be issued at the election of complainant, save in cases wherein a husband and wife are defendants, against whom the subpoena must be joint.

When the bill is filed a *præcipe* must also be filed with the clerk, directing the issuance of a subpoena or subpoenas as desired, and naming the rule day to which process is to be made returnable.

Rules 7, 11, 12.

XXIII. When issued, the subpoena is served by the marshal, his deputy or by some other person specially appointed by the court, or by a judge thereof, when necessity for such appointment exists.

In case of service by an appointee, return of service must be made under oath.

Rule 15. Revised Statutes, section 922.

XXIV. Service is made by delivering a copy of the subpoena to the defendant personally, or by

leaving a copy thereof at the dwelling-house or usual place of abode of each defendant, with some adult person who is a member of, or resident in, the family of the defendant.

Rule 13.

XXV. If a subpoena is returned not served upon a defendant, the complainant is entitled to other subpoenas against such defendant, until due service is made.

Rule 14.

XXVI. When a suit in equity is commenced, and satisfactory proof is made to the circuit court, or to the circuit justice or judge, that the defendant designs quickly to depart from the United States; that there is due from him a sum certain or capable of reduction to certainty; that complainant has no sufficient legal redress, and that irreparable injury or a denial of justice will be caused to complainant if the defendant so departs, such court or judge may order the issuance of a writ of *ne exeat*, upon which the marshal arrests the defendant and keeps him in custody, unless he gives security to abide the order and decree of the court.

Revised Statutes, section 717.

XXVII. In suits to enforce a lien upon, or claim to, or to remove any incumbrance, lien or cloud upon, the title to real or personal property within the district wherein the suit is brought, if one or more of the defendants shall not be an inhabitant

of or found within the district, service may be made by procuring from the court an order directing such defendant to appear, plead, answer or demur by a day to be fixed in the order, which order shall be served on such defendant wherever found, and also upon the person or persons in possession or charge of the property, if any there be. If personal service of such order cannot be made upon such defendant, the same may be published, in such manner as the court may direct, not less than once a week for six consecutive weeks.

To procure such order, a motion in writing should be filed, accompanied with an affidavit stating briefly the nature of the suit, the names of the defendants upon whom service cannot be had within the district, and the place of their supposed residence.

Upon proof being filed showing service or publication of the order as directed by the court, jurisdiction attaches so as to enable the court to adjudicate touching the property involved in said suit and to bind the interest of the absent party in the same, subject to the right of such party to appear within one year from the entry of final judgment, and, upon motion, to have such judgment against him opened and the matter reheard.

18 Statutes at Large, 472.

XXVIII. When a subpoena, order or other process is to be served without the limits of the district wherein suit is brought, it should be placed in the hands of the marshal within whose district service

is to be made, unless some other person has been appointed to make service.

XXIX. The marshal or person charged with the duty of making service of the subpoena should make the same forthwith, and when made should at once return the process to the clerk's office whence it issued, and upon return of service being made, the clerk must enter the suit upon his docket as pending in the court, stating the time of such entry.

Rule 16.

CHAPTER V.

DEFAULT AND DECREE PRO CONFESSO.

XXX. If a defendant, having been duly served, fails to enter an appearance at the proper time, or having appeared fails to file a plea, demurrer or answer to the bill by the proper rule day, the complainant may enter an order that the bill be taken *pro confesso*.

Thereupon the cause may be proceeded in *ex parte*, and, after the expiration of thirty days from the entry of default, decree therein may be entered, or the complainant, if he requires an answer to enable him to obtain a proper decree, may procure process by attachment against such defendant, upon which process the defendant may be arrested and held until he fully complies with the order of the court or judge, as to pleading to or answering said bill.

Rules 18, 19. Thomson v. Wooster, 114 U. S., 104.

CHAPTER VI.

APPEARANCE AND PROCEEDINGS ON BEHALF OF DEFENDANT.

XXXI. To prevent the entry of a default the defendant must, either personally or by his solicitor, enter his appearance at the rule day to which the process is made returnable, provided he was served with process twenty days before that day; otherwise the appearance day shall be the next rule day succeeding the day when the process is returnable.

A defendant may waive the service of process, or, being served, may waive the time allowed him and enter his appearance either personally or by his solicitor, entry thereof to be noted in the order book by the clerk.

Rules 17, 18.

XXXII. Having appeared, the defendant, if cause therefor exists, may, on or before the rule day next after the return day of the process, except to the bill on the ground that it contains impertinent or scandalous matter, that is, that it contains recitals of matters not pertinent or relevant to the real cause of action, or that it contains needless repetitions rendering the bill unnecessarily prolix, or that it contains, unnecessarily, statements of a scandalous nature calculated to do injury to the persons affected thereby.

Upon exceptions of this nature being filed the

same may be at once referred to a master. If it be found by the master, or by the court, that the exceptions are well taken, the impertinent or scandalous matter will be expunged at the expense of complainant, and he may be adjudged to pay all the costs of the defendant to that time.

When the defendant has procured an order referring such exceptions to a master he must procure action thereon by the master by the next succeeding rule day, or the exceptions will be deemed to be abandoned, unless the master certifies that further time is needed to enable him to complete the examination.

Rules 25-27.

XXXIII. Unless otherwise ordered by a judge of the court, for cause shown, the defendant, to prevent a default being entered, must file a plea, demurrer or answer to the bill on the rule day next succeeding the rule day upon which his appearance was entered.

Rules 18, 32.

XXXIV. The defendant may demur or plead to the whole bill or to part of it, or he may demur to part, plead to part, and answer as to the residue, or he may answer to the whole bill.

In case the bill specially charges fraud or combination on part of the defendants, a plea to such part must be accompanied with an answer fortifying the plea, and explicitly denying the fraud and combination, and the facts on which such charge is founded.

If any part of the bill is good and a demurrer to the whole bill is filed, it will be overruled.

Rule 32. *Livingston v. Story*, 9 Pet., 632.

XXXV. No demurrer or plea shall be allowed to be filed to a bill unless accompanied by a certificate of counsel that it is in his opinion well founded in point of law, and by the affidavit of the defendant that it is not interposed for the purpose of causing delay in the progress of the suit, and, in case of a plea, the affidavit must further aver that it is true in point of fact.

Rule 31.

XXXVI. Whenever a ground of defense is apparent on the bill itself, either from the matters therein alleged, or from a failure to allege some fact or facts essential to sustain complainant's right to relief, or from defects in the frame or form of the bill, or because it appears that the lapse of time or laches of complainant have barred the right of recovery, or it appears that there is a misjoinder of parties or a want of necessary parties, or that there is a lack of jurisdiction in the court, a demurrer to the bill will lie, and usually the objection should thus be taken.

If the bill is defective in substance in not showing a sufficient original cause of action, or by showing that a sufficient defense exists or that the court is without jurisdiction, a demurrer saves the expense caused by answering and taking evidence.

If the defect is in matter of form, the failure to demur may be deemed to be a waiver of the objection.

Livingston v. Story, 9 Pet., 682; *Maxwell v. Kennedy*, 8 How., 210; *Griffing v. Gibb*, 2 Black, 519; *Dillon v. Barnard*, 21 Wall., 430; *National Bank v. Carpenter*, 101 U. S., 567.

XXXVII. The demurrer may be general or special. It is the former when no particular ground is assigned, except that there is no equity in the bill. If the bill is attacked for defects in substance, the general demurrer is sufficient, though it is usual, and is the better practice, to state clearly and concisely the defects relied on as showing want of equity.

A demurrer is special when particular defects are attacked, and this form is indispensable when the objection to the bill is as to matter of form.

When a demurrer is interposed to a part only of a bill it should show the part or parts to which it is intended to apply.

XXXVIII. Where the objections or defenses relied upon by the defendant do not appear upon the face of the bill, they must be raised by a plea or answer.

A plea is said to be a special answer to a bill, or some part of it, whereby it is sought to show that, by reason of the special matter in the plea set forth, the complainant is barred from maintaining suit on the matters in the bill alleged, or is stopped from further progress in the forum or form in which the suit is pending.

The main purpose of the plea is to save the delay and expense of going into the case at large when some ground exists which, when it is brought to the attention of the court, will result in the abatement of the pending suit or bar recovery therein. The defense, therefore, proper for a plea is generally one that reduces the case, or some material part of it, to a single point.

Thus, if the defense is that the court has not jurisdiction of the cause, or that the suit is barred by the statute of limitations, or that an indispensable party is not joined, or that there is pending another suit upon the same cause of action, or other single matter which, if proven, will abate or bar the suit, the same should be presented by a plea.

Livingston v. Story, 11 Pet., 351; *Wickliffe v. Owings*, 17 How., 47; *Insurance Co. v. Brune*, 96 U. S., 588; *Farley v. Kittson*, 120 U. S., 303.

XXXIX. If the bill is not demurrable, and no fact, proper to be presented by a plea, exists either as matter in abatement or in bar, then the defense must be presented by way of answer, and the defendant is entitled by answer to insist upon all matters of defense, not being merely matters of abatement, or to the character of the parties, or of form, which exist in his behalf.¹

The defendant may in the answer suggest that the bill is defective for want of parties, and by proper averment state the names of such parties and their relation to the case.²

If the bill does not waive an answer under oath, the same must be sworn or affirmed to by the defendant before a judge of a court of the United States or of a state or territory, or before a commissioner appointed by the United States circuit court to take testimony, or before a master in chancery appointed by a United States circuit court or notary public.³

If thus sworn to, in obedience to the demand of the bill, the allegations of the answer, so far as responsive to the bill, are evidence in favor of defendant. To overcome same requires satisfactory testimony of two witnesses, or of one corroborated by circumstances equivalent in weight to that of another.⁴

¹ Rule 39. *Wickliffe v. Owings*, 17 How., 47.

² Rule 52.

³ Rule 59.

⁴ Rule 41. *Seitz v. Mitchell*, 94 U. S., 580; *Vigel v. Hopt*, 104 U. S., 441; *Farley v. Kittson*, 120 U. S., 303; *Morrison v. Durr*, 122 U. S., 518; *Union R. R. Co. v. Dull*, 124 U. S., 173; *Southern Co. v. Silva*, 125 U. S., 247.

XL. When a corporation is a party defendant to a bill requiring an answer under oath, the answer of the corporation should be attested by the corporate seal, that being the highest evidence that the answer is the solemn act of the corporation, and stands in place of the oath of an individual.

Bronson v. R. R. Co., 2 Wall., 283.

XLI. The defendant may in his answer suggest that the bill is defective for want of parties, giving

the names or description of such parties and the facts showing the necessity of their being made parties, and thereupon the complainant may, within fourteen days after answer filed, set down the cause for argument upon this objection only, by entering in the clerk's order book a notification to that effect.

If complainant does not thus set down the cause for argument on the objection of want of parties, but proceeds to a hearing generally, he shall not, if the objection of want of parties be sustained, be entitled as of course to an order to amend by adding the parties, but the court may, if it thinks fit, dismiss the bill.

Rule 52.

XLII. If the defendant does not, by plea or answer, object to the bill as defective for want of parties, the objection will not be allowed to prevail at the hearing of the cause, if the court can grant a decree saving the rights of the absent parties.

Rule 53. *Bank v. Seton*, 1 Pet., 299; *Story v. Livingston*, 13 Pet., 359.

XLIII. If the allegations of the bill, averring the character of the parties, as that they are administrators, executors, trustees, or the like, and averring the citizenship of the adversary parties, are sufficient, *prima facie*, to sustain the jurisdiction of the court

and the right to sue, issue thereon, if at all, must be taken by a plea, and not by answer.

Rule 39. *Wickliffe v. Owings*, 17 How., 47; *Farmington v. Pillsbury*, 114 U. S., 138.

XLIV. Since the adoption of the act of 1875 this general rule is subject to the qualification found in section 5 of that act, to the effect that if it appears in a suit at any time that it does not really and substantially involve a controversy within the jurisdiction of the court, or that the parties have been collusively made or joined for the purpose of creating a cause cognizable in the United States circuit court, such court shall proceed no farther, but must dismiss the cause.

18 Statutes at Large, 470. *Williams v. Nottawa*, 104 U. S., 209; *Barry v. Edmunds*, 116 U. S., 550; *Hartog v. Memory*, 116 U. S., 588.

XLV. As already stated, the defendant may demur to part, plead to part, and answer to the residue.

It cannot be objected to the demurrer or plea that the same does not cover so much of the bill as it might, by law, have extended to, nor because the answer may extend to some part of the same matter covered by the demurrer or plea.

Rules 32, 36, 37.

CHAPTER VII.

FURTHER PROCEEDINGS ON PART OF COMPLAIN-
ANT, INCLUDING REPLICATION.

XLVI. If a demurrer to a bill is filed the complainant must, on the rule day the same is filed, or on the next succeeding rule day, set the same down for argument, or the failure so to do will be deemed an admission that the demurrer is well taken, and his bill will be dismissed, unless, upon application to a judge of the court, further time be allowed him to set the same down for hearing.

Rule 38.

XLVII. If a plea to the bill is filed the complainant must, on the same or the next succeeding rule day, either set the same down for argument or reply to the plea. If set down for argument the facts well pleaded in the plea are admitted, and the question of their legal sufficiency is alone presented. By reply issue is taken upon the facts. The allegations in the plea, though under oath, are not evidence in favor of defendant.

Rule 38. *Farley v. Kittson*, 120 U. S., 303.

XLVIII. If, upon the hearing, a demurrer or plea is overruled, the complainant is entitled to costs, unless the court is satisfied that there was good ground for the interposition of the same, and that it was not interposed for delay.¹

The defendant will also be required to answer the bill, or so much thereof as was covered by the plea or demurrer, by the next rule day or such other time as the court may deem advisable, and in default of such answer the bill may be taken *pro confesso*.¹

If the demurrer or plea on the hearing is sustained the defendant is entitled to costs, and the court may, at its discretion, upon motion of complainant, permit him to amend his bill upon such terms as may be reasonable.²

¹ Rule 34. Powder Co. v. Powder Works, 98 U. S., 126.

² Rule 35. National Bank v. Carpenter, 101 U. S., 587.

XLIX. Upon the filing of an answer the complainant may, if cause exists, file exceptions thereto on the ground that it contains scandalous or impertinent matter.

The exceptions must be in writing, signed by counsel, and be filed by the rule day next after the day of the filing the answer.

Upon filing the same the complainant must at once apply to a judge for an order referring the exceptions to a master for examination, and without delay procure the master to examine and report thereon on the same or the next succeeding rule day, unless the master shall certify that further time is needed to enable him to complete the examination.

Rule 27.

L. Exceptions to the answer may also be filed on the ground of insufficiency.

The exceptions must be in writing, be signed by counsel, and be filed by the rule day next succeeding the rule day upon which the answer was filed, unless the court, or a judge thereof, shall, for cause shown, enlarge the time.¹

The exceptions should point out specifically the particular parts of the bill which it is claimed are not sufficiently answered, and the defects in the answer excepted to.

Exceptions for scandal or impertinence should be disposed of before excepting on ground of insufficiency.

If a defendant demurs or pleads to any part of the discovery sought by a bill, and also answers the bill, exceptions to the answer for insufficiency should not be filed until the demurrer or plea is disposed of, as filing the same admits the validity of the demurrer or plea.

If, however, the demurrer or plea is only to the relief prayed by the bill, exceptions to the answer may be filed without thereby admitting the validity of the demurrer or plea.

If the defendant deems the exceptions well taken he must file an amended answer by the next succeeding rule day, but if he does not, by so amending, admit the exceptions, then the complainant must

set the same down for hearing on the next following rule day before a judge of the court.²

If not thus set down for hearing the exceptions are deemed abandoned, and the answer is deemed sufficient.³

If, on hearing, the exceptions are sustained, the defendant must, by the next rule day, file a full and complete answer, or the complainant may take the bill as confessed, so far as the matter excepted to in the answer applied thereto, or he may by attachment compel the defendant to make full answer to the matters covered by the exceptions.⁴

The court or a judge thereof may, for cause shown, enlarge the time for amending the answer.

¹ Rule 61

² Rule 63.

³ Rule 63.

⁴ Rule 64.

L.I. If the complainant does not except to the answer, or if, being excepted to, the same is amended, or the exceptions upon a hearing are not sustained, and if the case is not set down for hearing on the bill and answer, the complainant must, by the rule day next succeeding the rule day upon which the answer or the amended answer is filed, file a general replication thereto, and thus complete the issue in the cause. If the replication is not thus filed, the defendant is entitled to an order, as of course, for the dismissal of the suit.

The court or a judge thereof, for cause shown, may allow a replication to be filed after the rule day upon which it should have been filed.¹

Special replications cannot be filed.

If, by reason of matters alleged in the answer, it becomes necessary for complainant to allege new matter, it must be done by an amendment to the bill, or by a supplemental bill.²

¹ Rule 66.

² Rules 45, 57. *Marsteller v. McLean*, 7 Cranch, 156; *Vattier v. Hinde*, 7 Pet., 252.

CHAPTER VIII.

HEARING ON BILL AND ANSWER—TAKING TESTIMONY ON ISSUE JOINED—REFERENCE TO MASTER AND PROCEEDINGS BEFORE SAME.

LII. The complainant may, when the original or amended answer is filed, set the cause down for hearing upon bill and answer.

In such case, the matters well pleaded in the answer are deemed to be true as matters of fact, and the case is heard upon the allegations of fact in the bill contained, and not denied in the answer, taken in connection with the facts averred in the answer.

Rule 41. *Leeds v. Ins. Co.*, 2 Wheaton, 380.

LIII. A cause being at issue upon questions of fact, two general modes exist for submitting such issue for final determination; *i. e.*, the evidence may be taken and the cause be submitted in the first instance to the court, or the same may be sent to a master for his examination and report.

LIV. If the cause is not referred to a master, ninety days from the time the issue is joined are allowed for the taking of the testimony on behalf of both parties, unless the court or a judge thereof, for good cause shown, shall enlarge the time.

Rule 69. *Ingle v. Jones*, 9 Wall., 486.

LV. Either party may give notice to the other that he desires the evidence to be taken orally, in

which event all the witnesses must be examined before one of the examiners of the court, or before an examiner specially named by the court to act in the given case, who must be furnished with a copy of the bill and answer.

The parties have a right to be present at the examination, and the witnesses are examined and cross-examined in the mode usual in common-law courts. The testimony given may be taken down in the narrative form by the examiner, unless he deems it advisable to adopt the form of question and answer. When completed each deposition must be read over to the witness giving the same, and be by him signed in the presence of the parties or their counsel. If a witness refuses to sign a deposition the examiner may do so, and thus authenticate the same.

Objections made to questions or answers must be noted down upon the deposition by the examiner, as he does not possess the power to decide upon the competency, relevancy or materiality of the questions.

When the evidence is to be thus taken orally, the court may, upon motion of either party, assign the time within which the complainant shall take his evidence in support of the bill, and a time thereafter for the defendant to take his evidence, and a time thereafter for complainant's evidence in reply; and the evidence of the respective parties must be so taken, unless the parties by agreement, or the court

on motion and for cause, shall extend the time therefor.

If either party has any documentary evidence not introduced before the examiner in connection with the testimony of the witnesses, he should file the same with the clerk of the court within the time allowed him for taking evidence orally.

The examiner may fix, by order, the time and place for conducting the examination of the several witnesses, and notice thereof must be given by the counsel of the moving party to the adversary party or his counsel.

Rule 67. *Blease v. Garlington*, 92 U. S., 1.

LVI. If neither party requires the testimony to be taken orally in the method just described, then the same may be taken by depositions, according to the provisions of rule 67, or according to the acts of congress.

Rules 67, 68. Revised Statutes, sections 863-875.

LVII. If taken under the provisions of rule 67, the interrogatories must be written out and filed with the clerk, with a request to the clerk to issue a commission at the proper time, unless the parties agree that the testimony may be taken on oral interrogatories. Ten days' notice thereof must be given to the adverse party or his counsel, in order that cross-interrogatories may be filed.

The court or a judge thereof, or the clerk, if so authorized by general order, selects the person to

act as commissioner, and upon the expiration of the ten days' notice issues to the party selected a commission, having attached thereto the interrogatories and cross-interrogatories to be propounded to the witness.

If testimony is taken upon written interrogatories the last interrogatory must be substantially in the following form:

"Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matter in question in this cause?"

"If yea, set forth the same fully and at large in your answer."

Rules 67-71.

LVIII. Sections 863, 864 and 865 of the Revised Statutes contain the provisions authorizing taking depositions *de bene esse*.

According to section 863 if a witness lives at a greater distance than one hundred miles from the place of trial, or is bound on a sea voyage, or is about to go out of the United States, or out of the district in which the case is pending, and to a distance greater than one hundred miles from place of trial, or when he is ancient or infirm, the party wishing his evidence may take his deposition before any judge or clerk of a United States court, or before a commissioner of a circuit court, or before any judge

of a state court, or before a mayor or chief magistrate of a city, or before a notary public, provided such party is not of counsel or an attorney for either party to the litigation, and is not interested in the event of the cause.

Reasonable written notice of the time, place and officer before whom the deposition is to be taken, with the names of the witnesses, must be given to the opposite party or his counsel.

Section 866 of the Revised Statutes provides that where it is necessary in order to prevent a failure or delay of justice, the court may grant a *dedimus potestatem* to take depositions according to common usage. Depositions taken according to the usage in the courts of the state wherein the cause is pending are deemed to be taken according to common usage.

LIX. If, after a bill is filed, and before the defendant has answered the same, it is made to appear by affidavit that any of the complainant's witnesses are aged and infirm, or are about to leave the country, or that any of them is a single witness to a material fact, the complainant may upon application procure from the clerk the issuance of a commission to such person as a judge of the court shall direct, to take the testimony of such witness or witnesses, due notice of the time and place of taking the same being given to the adverse party.

Rule 70.

LX. The court may, if it deems it advisable, per-

mit witnesses to be examined *viva voce* in open court.

If the case is appealable, the testimony thus heard should be taken down and made part of the record, or it will be disregarded by the supreme court.

Rule 78. *Blease v. Garlington*, 92 U. S., 1.

LXI. The circuit courts may appoint standing masters in chancery, and they may also appoint a master to act in a particular case.

Rule 82.

LXII. The court may, of its own motion or upon the application of either party, refer any case to a standing or special master, or may refer a given issue or special matter arising in a cause to such master.

Cases involving the settlement of accounts, or which involve numerous computations of amounts, or which require the ascertainment of a number of facts involving the examination of many witnesses in order to present the ultimate questions determinate of the case, are ordinarily referred to a master.

Frequently the court will determine the principles governing the rights of parties litigant, and then send the case to a master for him to take testimony when needed, and find and state the results reached upon the application of the principles decided to the facts developed in the evidence.

St. Colombe v. United States, 7 Pet., 625.

LXIII. When a reference to a master is had, the party at whose instance the reference was had, or, if made by the court of its own motion, then the party upon whom the burden of proof lies, must, on or before the next rule day, bring the matter before the master, or if he does not so do, the other party may bring the matter before the master at the costs of the delinquent party.

The matter is brought before the master by furnishing him a certified copy of the order of reference, and a request that he assign the time and place of proceeding with the hearing.

Rule 74.

LXIV. The order of reference to a master should always clearly show what issue or matter is thus referred to him, whether the issues at large or only some special matter or matters connected therewith.

LXV. The master assigns the time and place for the hearing, giving due notice thereof to the parties in interest or their solicitors.

If either party fails to appear at the proper time and place, after due notice thereof has been given, the master may proceed *ex parte*, or may adjourn to a future day, giving notice thereof to the absent party or his solicitor. It is the duty of the master to proceed with all reasonable diligence, and either party may, when cause exists, apply to the court or judge for an order to speed the proceedings.

Rule 75.

LXVI. The master has the power to regulate the proceedings before him; to direct the manner in which the matters shall be proven before him; to examine the parties and their witnesses either *viva voce*, or when necessary to cause depositions to be taken; to require the production of all books, papers, writings, vouchers and other documents applicable to the matters covered by the reference; and generally to do all other acts and direct all other inquiries and proceedings by him deemed necessary to fully and justly perform the duties imposed upon him.

Rules 77-79. *Story v. Livingston*, 13 Pet., 359.

LXVII. All affidavits, depositions and documents previously made, read or used in the court in the progress of the cause may be used before the master.¹

When necessary the master may direct the taking of testimony to be used before him by depositions, the same to be taken according to the provisions of the acts of congress, or the master may issue a certificate to the clerk directing him to issue a commission for the examination of the named witnesses.²

If either party requires it, the testimony of witnesses examined *viva voce* before the master must be taken down by the master, or by some one appointed by him and in his presence, in order that the same may be preserved for use before the court.³

¹ Rule 80.

² Rule 77.

³ Rule 81. *Blease v. Garlington*, 92 U. S., 1.

LXVIII. Upon the completion of the hearing before the master his report is prepared, and, with the evidence taken before the master, is returned into the clerk's office, the date of such return being entered by the clerk in the order book.¹

If either party desires to except to the report, the exceptions must be filed in the clerk's office within one month after the filing of the report.²

The exceptions should clearly and specifically point out the matter or matters excepted to, so that upon the face thereof the court can see the grounds of exception, and the parts of the report excepted to.³

If no exceptions are filed within the month allowed, the report will stand confirmed upon the rule day next succeeding the expiration of the month allowed for filing exceptions.

If exceptions are filed they stand for hearing before the court, if then in session, and if not, then at the next session thereof.²

¹ Rules 76, 82, 83.

² Rule 83.

³ *Story v. Livingston*, 13 Pet., 359; *Foster v. Goddard*, 1 Black, 506.

CHAPTER IX.

WITNESSES — ATTENDANCE — MODES OF SUMMONING
AND ENFORCING ATTENDANCE — FEES.

LXIX. Witnesses living within the district wherein the cause is pending may be summoned to testify before the court, before a commissioner or examiner appointed to take testimony, or before a master to whom a reference has been made.¹

Witnesses living without the district at distances not exceeding one hundred miles from the place of trial may, in like manner, be summoned to appear and testify.²

Witnesses living outside the district wherein the cause is pending, and more than one hundred miles from the place of trial, cannot be compelled to attend in person.

In such cases, if they do not voluntarily appear in person, their testimony must be taken before a commissioner or examiner at a place sufficiently near their residence to compel their attendance by subpoena.

When testimony is sought to be taken under a *dedimus*, a witness cannot be required to go out of the county of his residence, nor to a distance greater than forty miles from his place of residence. Nor can he be deemed guilty of contempt for not obeying a subpoena, unless his fee for going and re-

turning, and for one day's attendance, are paid or tendered him at the time the subpoena is served.³

¹ Rule 78.

² Revised Statutes, section 876.

³ Revised Statutes, section 870.

LXX. For attendance before a court, commissioner, examiner or master, witnesses are entitled to a *per diem* of \$1.50, and to mileage at the rate of five cents for each mile traveled in going from his place of residence to the place of hearing and returning.

Revised Statutes, section 848.

LXXI. Subpoenas for summoning witnesses are issued by the clerk. Subpoenas signed and sealed by the clerk, but without the names of the witnesses being set forth, may be furnished by the clerk to the parties litigant and their solicitors, or to a commissioner, examiner or master, any one of whom can insert the names of the parties to be summoned.

Rule 78.

LXXII. A refusal to obey a subpoena properly issued and served upon a witness, requiring him to appear and testify before a commissioner, examiner or master, is a contempt of court. In such case the commissioner, examiner or master may certify the facts into the clerk's office, and thereupon the court or judge may order the issuance of an attachment against the party in default.

Rule 78.

LXXIII. When a commission issues for the taking the testimony of a witness at any place within any district or territory of the United States, the clerk of any United States court for such district or territory, upon the application of either party to the suit, or his agent, may issue a subpoena commanding the witness to appear and testify before the commissioner named in the commission, at a time and place stated in such subpoena.

If the witness, after due service of the subpoena, refuses or neglects to appear, or, after appearing, wrongfully refuses to testify, the judge of the court from which the subpoena issued may enforce obedience to such process, or punish the disobedience thereof as a contempt of court.

Revised Statutes, section 868.

LXXIV. If the witness whose testimony is sought to be taken upon commission is found within the District of Columbia, then the application for a summons to the witness must be made to a justice of the supreme court of the District, and due proof be made to him that the testimony of the witness is material and that a commission has issued for taking the same.

Revised Statutes, section 871.

LXXV. Upon the application of either party to a suit, a judge of any court of the United States in any district or territory may order the clerk of his

court to issue a *subpœna duces tecum* requiring the witness therein named to appear and testify before the commissioner at the time and place named in the subpoena, and to bring with him and produce before said commissioner any paper, writing, instrument, book or document supposed to be in his possession, the same to be described in said subpoena; provided it is made to appear to said judge, by affidavit or otherwise, that there is reason to believe that said writing, paper, instrument, book or document is in the possession or power of said witness, and if produced would be competent evidence on behalf of the party applying for the order.

For failure to obey such subpoena the party may be proceeded against for contempt before the judge granting said order.

Revised Statutes, section 869.

CHAPTER X.

AMENDMENTS — SUPPLEMENTAL AND REVIVAL
BILLS.

LXXVI. The complainant is entitled, as a matter of course and without payment of costs, to amend the bill in any particular, before a copy thereof has been taken by, or furnished to, a defendant; and, after copy taken, may amend as to matters of form, clerical errors, misnomer of parties, misdescription of premises, errors of date or failure to fill blanks.

If, after a copy of the bill has been taken by a defendant, but before a demurrer, plea or answer has been filed, the complainant desires to amend the bill in a material point, which he may do, he must furnish a copy of the amendment, or of the bill as amended, to the defendant, and pay defendant the costs occasioned thereby.

After a demurrer, plea or answer has been filed to the bill, but before a replication has been filed, the complainant may, upon motion or petition to a judge, without notice thereof to defendant, obtain an order allowing him to amend his bill on or before the next succeeding rule day.

After replication has been filed, complainant cannot withdraw the replication and file an amendment to the bill, except upon an order to that effect being granted by a judge, upon a motion or petition, with due notice of the application to the defendant, the

motion or petition to be supported by an affidavit showing that the same is not made for delay or vexation, and that the amendment is material and could not have been sooner introduced into the bill.

If the complainant, having obtained leave to amend, does not file the same by the next succeeding rule day or the time specially named in the order, he will be deemed to have abandoned the same, and the cause must proceed as if no such application had been made.

Rules 28, 29.

LXXVII. Generally, defects in the form of the bill, in the non-joinder or misjoinder of parties, in the statement of improper matter, in the omission to state some material or pertinent matter, are matters to be remedied by filing an amendment; and also if, to meet the averments of the answer, it becomes necessary to set forth matters existing when the bill was filed, but which are not contained in the original bill, the same should be set forth by way of amendment.

So, also, leave to amend the bill at the hearing may be granted in furtherance of justice, if the proofs show that complainant is entitled to relief, but there appears need of the addition of a party, or of more precise averments of facts, or of an amendment of the prayer.

Revised Statutes, section 954. *Neale v. Neale*, 9 Wall., 1; *The Tremolo Patent*, 23 Wall., 518; *Hardin v. Boyd*, 113 U. S., 756; *Graffam v. Burgess*, 117 U. S., 180.

LXXVIII. The answer may be amended as a matter of course in a matter of form or as to filling blanks, correcting dates, or by reference to a document or other small matter, and be resworn to, at any time before a replication thereto is filed or the cause is set down for hearing upon bill and answer.

After replication is filed or the cause is set down for hearing on bill and answer, no material amendment can be made, except upon leave granted by the court or judge, after due notice of the application therefor given to the complainant.

Rule 60.

LXXIX. When a pending suit becomes defective by the happening of some event after the filing of the bill, affecting the interest of the parties or the subject-matter of the suit, or for any other reason it becomes apparent that some new party should be brought in or some new fact should be alleged, the defect may be cured by filing a supplemental bill.

Application for leave to file same should be made to a judge upon a rule day, notice being given to the adversary party.

If leave is granted and the supplemental bill is filed the defendant must demur, plead or answer to the same on the next succeeding rule day unless some other time is assigned by the judge. If new parties are brought in, a subpoena must be issued and served on them.

Rule 57. *Kennedy v. Bank*, 8 How., 586; *Shaw v. Bill*, 95 U. S., 10.

LXXX. In suits wherein there are two or more complainants or two or more defendants, and one or more of them dies, and the cause of action survives in the remaining complainants or against the remaining defendants, the suit is not thereby abated, but upon suggestion of the death of the party entered upon the record, the suit continues.

Revised Statutes, section 956.

LXXXI. When either of the parties, complainant or defendant, dies before final decree, the executor or administrator of such deceased party may, in case the cause of action survives by law, prosecute or defend such suit as though originally a party thereto.

If the executor or administrator does not voluntarily make himself a party, the adversary party may sue out a *scire facias* from the office of the clerk of the court wherein the suit is pending, requiring him to become a party or show cause to the contrary, and if he does not, within twenty days from service thereof, make himself a party or show sufficient cause, the court may render judgment against the estate of the deceased party the same as though the administrator or executor had voluntarily made himself a party.

Revised Statutes, section 955.

LXXXII. If, after the filing the bill and service of process, or waiver of same by entering an appearance, an event happens of such a nature as to abate

the suit as then pending, as, for instance, the death of either party, then the suit, where the cause of action survives, may be revived by the filing of a bill of revivor, or a bill in the nature of a bill of revivor, as the circumstances may require.¹

The former lies in cases wherein the interest of the deceased party passes to another by reason of mere privity of blood or of representation by operation of law; the latter in cases wherein the interest of the deceased party passes to another by virtue of the act of the deceased. Thus, an heir may be made a party by a bill of revivor because he inherits by operation of law and as a privy by blood. An executor or administrator may also be made a party by a bill of revivor because they represent the deceased by operation of law.

In case, however, lands are devised to another by the deceased party, the devisee is brought in by a bill in the nature of a bill of revivor.

Practically the difference between the named forms of bills is reduced to the title thereof, as all that is essential therein is to set forth the title of the cause, aver its pendency in the court, the happening of the event abating the suit, and the name or names of the parties in whose favor or against whom it is sought to revive the suit, with a statement showing that they are the now proper parties, and praying that they may be made parties and for process against them. Upon the filing of the bill the clerk issues a subpoena requiring the proper representatives

of the other party to appear and show cause why the suit should not be revived.

If cause is not shown at the rule day occurring next after fourteen days from service of the subpoena, the suit stands revived as matter of course.

If cause is shown, then the matter must be submitted for decision to the court or a judge thereof.

Rule 56. *Clarke v. Matthewson*, 12 Pet., 164.

LXXXIII. The revival of a cause is not deemed to be the beginning of a new suit, but it is simply the continuance of the original proceeding.¹ The jurisdiction of the court is not affected nor defeated if the representative parties thus brought in are citizens of the same state with the adversary party.¹ Jurisdiction having once rightfully attached is not defeated by the subsequent changes in the parties necessitated by the abatement and revival of the suit.¹

Evidence taken before the happening of the event necessitating the revival may be used in the further progress of the cause.²

¹ *Mollan v. Torrance*, 9 Wheaton, 537; *Clarke v. Matthewson*, 12 Pet., 164.

² *Vattier v. Hinde*, 7 Pet., 252.

LXXXIV. If a party to a final decree dies before an appeal is perfected within the time allowed for taking an appeal, and it is desired to take an appeal, it is not necessary to revive the suit by formal proceedings.

If the representative of such deceased party desires the appeal, he may file in the office of the clerk of the circuit court a duly certified copy of his appointment, and may thereupon enter an appeal as the party he represents might have done.

If the party in whose favor the decree was entered dies before appeal, the appellant may procure the allowance of an appeal, docket the case and file the record in the supreme court, suggest the death of the party, and in that court obtain an order that unless the representative of the deceased party appear and become a party within the first ten days of the ensuing term, the appellant shall have leave to open the record and submit the cause, a copy of such order being printed in some newspaper of general circulation within the state, territory or district from which the case is brought for three successive weeks, such publication to be completed at least sixty days before the beginning of the next term of the supreme court.

18 Statutes at Large, 473. Supreme Court Rules, No. 15.

CHAPTER XI.

PREPARATION FOR HEARING — SUBMISSION OF
CAUSE — DECREE.

LXXXV. Preparatory to submitting a cause to the court upon the pleadings and evidence, if the same are voluminous, proper abstracts thereof, with indexes thereto, should be prepared.

The evidence bearing upon each issue or distinct question of fact should, so far as possible, be grouped together.

There is no other step in the preparation and submission of a cause in which care, discrimination and thoroughness on part of counsel are of greater moment than in bringing together in logical and lucid form and sequence the vital issues in the case and the evidence applicable thereto.

LXXXVI. After the taking of the evidence is closed and before the final rendition of decree, if a party desires to present any new matter in the way of issue or evidence, he must apply for leave to the court or judge by petition setting up the new matter or issue, so that its relevancy and materiality can be judged of, and asking leave to introduce further evidence, or to amend the pleadings, and also showing the reasons why the party was not in fault in not earlier presenting the matter.

LXXXVII. When the decision of the court is made known, a decree in accordance therewith should

be prepared and be submitted to the judge for signature, and when signed must be filed with the clerk for entry.

In drawing up decrees no part of the pleadings, nor of the master's report or other prior proceedings, should be recited or stated in the decree.

It should, in apt terms, clearly set forth the exact conclusion and judgment of the court upon the issue or issues passed upon, and if by such judgment the defendant is required to abstain from doing any act, or is required to perform any act, the same should be set forth clearly, and, in case of performance required, the time, mode and conditions thereof should be made plain.

Rule 86.

LXXXVIII. In suits for the foreclosure of mortgages, wherein the mortgaged property does not realize enough to pay the debt due complainant, a decree for the balance left unpaid may be rendered, and execution may issue therefor.

Rule 92.

CHAPTER XII.

PRELIMINARY INJUNCTIONS AND RESTRAINING ORDERS.

LXXXIX. Pending the hearing and final disposition of cases in equity, writs of injunction, when cause therefor exists, may be issued by the circuit court or any judge thereof.

The justices of the supreme court cannot hear or allow any application for a restraining order or an injunction in a case pending in the circuit court, except within the limits of the judicial circuit to which they are severally assigned, except in cases wherein such application cannot be heard by the circuit or district judges.

As one of the judges of the circuit court, the district judge cannot order the issuance of an injunction, if the party applying therefor has had a reasonable time to apply to the circuit court for the writ.

An injunction allowed by a district judge continues in force only until the first day of the next term of the circuit court.

If it is desired to continue the same, an order to that effect must be procured from the court.

Revised Statutes, section 719. *Parker v. Judges*, 12 Wheaton, 561.

XC. When the bill prays an injunction to stay proceedings at law, if the defendant does not appear and plead, demur or answer to the same within the time required by the rules, the complainant is

entitled as of course, and upon motion without notice, to the issuance of the writ for the purpose named.

In other cases injunctions are granted only after a hearing by the court if in session, or by a judge thereof, due notice of the application being first given to the adverse party.

Injunctions awarded in vacation, unless previously dissolved by the judge granting the same, continue in force until the next term of the court, or until dissolved by some order of court.

It is the safer practice, if it is desired to continue the injunction granted in vacation, to obtain an order for its continuance on the first day of the next ensuing term of the court.

Rule 55.

XCI. Upon notice being given of a motion for an injunction, the court or judge, if there appears to be danger of irreparable injury from delay, may grant an order restraining the act sought to be enjoined until the decision upon the motion for the injunction, which restraining order may be granted with or without security in the discretion of the court or judge.

Revised Statutes, section 718.

XCII. The courts of the United States, nor the judges thereof, cannot by injunction stay proceedings in the courts of the state, except in cases where such injunction is authorized by the laws relating to proceedings in bankruptcy.

Revised Statutes, section 720.

CHAPTER XIII.

CROSS-BILLS.

XCIII. A cross-bill, being a bill brought by a defendant against the complainant, or against other defendants, or against both, is usually filed (1) to obtain a discovery of facts in aid of the defense to the original bill, or (2) to obtain full relief touching the matters of the original bill.

When filed for the purposes of discovery only against the complainant, the defendant to the original bill must answer the original bill before the complainant therein can be required to answer the cross-bill.¹

The statutory change in the admissibility of parties in interest as witnesses has largely obviated the necessity of resorting to a cross-bill for the sole purposes of discovery.

When filed for purposes of relief, the cross-bill must be based upon the matters in question in the original bill, and it must appear that a settlement of the controversy presented by the cross-bill is fairly necessary in order to enable the court to fully dispose of the litigation connected with the matter of the original bill.²

Leave to file a cross-bill must be procured before filing same or the bill may be disregarded at the hearing.³

New parties cannot be introduced by a cross-bill.⁴

The cross-bill should pray process against those made defendants thereto, and unless they appear to the cross-bill a subpoena should be issued and served upon them.⁵

The defendants therein may, by demurrer, plea or answer, make defense to the allegations and relief sought by the cross-bill.

¹ Rule 72.

² *Cross v. De Valle*, 1 Wall., 1; *Rubber Co. v. Goodyear*, 9 Wall., 807.

³ *Bronson v. R. R. Co.*, 2 Wall., 283.

⁴ *Shields v. Barrow*, 17 How., 130; *Bank v. R. R. Co.*, 11 Wall., 624.

⁵ *Washington R. R. v. Bradleys*, 10 Wall., 299.

CHAPTER XIV.

RIGHT OF INTERVENTION BY THIRD PARTIES.

XCIV. Where a person not a party to the original bill has an interest by way of title, lien or otherwise in the property which forms the subject-matter of the suit, or which has, by means of process or order of the court, passed into the possession or under the control of the court, and such interest is liable to be affected by the proceedings, he may, by petition, apply to the court for leave to intervene for the protection of his rights, and such leave will be granted when cause exists.

The right of the court to grant such leave and to hear and adjudicate upon the rights of such intervenor is not defeated by reason of the fact that such intervenor and complainant are citizens of the same state.

If leave is granted, the party obtaining same must forthwith, unless time be granted, file his petition in the cause, setting forth his rights, and praying for the relief sought, and give notice of the filing thereof to the other parties to the cause.

Freeman v. Howe, 24 How., 450; *Krippendorf v. Hyde*, 110 U. S., 276; *Gumbel v. Pitkin*, 113 U. S., 545; *Stewart v. Durham*, 115 U. S., 61; *Gumbel v. Pitkin*, 124 U. S., 143.

CHAPTER XV.

REHEARINGS AND BILLS OF REVIEW.

XCV. After decree, rehearings may be applied for by petition. *Rule 20*

In cases wherein an appeal lies to the supreme court, the petition must be filed and brought to the attention of the court at the term at which the final decree in the cause is entered. *Book, 10112*

In cases not appealable the court may in its discretion permit the petition to be filed at any time before the end of the term next after that at which the decree was entered.

The petition for rehearing must set forth clearly the special matter or cause on which the rehearing is sought, must be signed by counsel, and the facts relied on, if not already apparent on the record, must be verified by the oath of the party, or some other person having knowledge thereof. Notice of the application should be given to the adversary party or his solicitors. The granting or refusing a rehearing is a matter wholly within the discretion of the circuit court, and its action thereon cannot be appealed from. In cases, therefore, in which an appeal lies to the supreme court, and it is desired to present to the circuit court grounds for a rehearing, and if the relief sought is refused, then, to carry the questions to the supreme court, the remedy

must be sought by filing in the circuit court a bill of review.

Rule 88. *Steines v. County*, 14 Wall., 15; *Buffington v. Harvey*, 95 U. S., 99.

XCVI. If the errors complained of in the final action and decree of the circuit court inhere, in whole or in part, in the conclusions of fact, so that to present the same to the supreme court it is necessary to go into the evidence adduced before the circuit court for the purpose of showing error in the conclusions of fact upon which the decree was based, then the remedy lies in an appeal, upon which the cause is reviewed upon both law and fact.¹

If, however, the error complained of is apparent upon the face of the record, by which is meant the bill, answer and other pleadings and proceedings, the master's report and the decree, but not including the evidence, then the same may be presented by a pure bill of review. In other words, upon a pure bill of review, nothing can be urged as ground of reversal save error of law apparent on the face of the record.²

If, however, after decree rendered, discovery is made of any new matter of a nature sufficient to show error in the decree, or of new evidence material to the issue upon which the case was heard, and the party seeking the benefit thereof was not in fault in not discovering and presenting such matter or evidence before the hearing, relief by reason

thereof may be sought by filing a bill of review, in which may be joined allegations showing error of law on the face of the record, as well as the allegations touching the newly-discovered matter or evidence.³

¹ *United States v. Goodwin*, 7 Cranch, 108; *Putnam v. Day*, 22 Wall., 60.

² *Whiting v. Bank*, 13 Pet., 6; *Putnam v. Day*, 22 Wall., 60; *Buffington v. Harvey*, 95 U. S., 99; *Thompson v. Maxwell*, 95 U. S., 391; *Beard v. Burts*, 95 U. S., 434; *Clark v. Killian*, 103 U. S., 766; *Shelton v. Van Kleeck*, 106 U. S., 532; *Nickle v. Stewart*, 111 U. S., 776; *Bridge Co. v. Hatch*, 125 U. S., 1.

³ *Buffington v. Harvey*, 95 U. S., 99.

XCVII. Where a bill of review, based in whole or in part upon the alleged discovery of new matter or new evidence, is allowed and filed, it stands, so far as such new matter or evidence is concerned, as an original bill, to which the adversary party may interpose a demurrer or an answer. If, by reply to the answer, an issue of fact is made, evidence will be heard thereon, and if the facts alleged are found to be true, and to be sufficient to affect the original decree, the same will be opened, and, if necessary, a new hearing will be had, and the proper decree be entered.

If, upon demurrer or the hearing on the facts, it be held that the same are not sufficient to require a rehearing or the modification or reversal of the decree, the bill of review will be dismissed.

Upon such issue of fact the evidence adduced at

the original hearing cannot be discussed for the purpose of showing error in the conclusions based thereon at the original hearing, although it may be adverted to for the purpose of showing the bearing and materiality of the new matter or evidence sought to be availed of by means of the bill of review.

Buffington v. Harvey, 95 U. S., 99; *Craig v. Smith*, 100 U. S., 226.

XCVIII. Bills of review based solely upon errors of law apparent on the face of the record are fileable as matter of right, and ordinarily must be brought within the time limited by statute for taking an appeal, which is now two years from entry of final decree.¹

If, however, the cause is taken by appeal to the supreme court, but is not there heard upon the merits, but the appeal is dismissed without opportunity being had to present the merits, the party aggrieved may file a bill of review in the circuit court after the dismissal of the appeal, even though the two years may have elapsed, as in such case he could not file the bill while the appeal was pending, and under such circumstances the period during which the circuit court was deprived of jurisdiction is not computed in ascertaining whether the two-year limitation has expired.²

When the bill is founded upon matters discovered since entry of decree, this limitation does not necessarily apply; yet as bills of this character are, ordi-

narily, appeals to the discretion of the chancellor, the matter of the lapse of time is always one of weight in deciding what equitable discretion demands in a given case.³

Hence a party against whom a decree has gone should be diligent in ascertaining whether cause for review exists, and upon discovery thereof should promptly apply for leave to file the proper bill.

Not only so, but he should, so far as it is in his power, perform the decree in all particulars, save those in which, by performance, he would defeat the rights sought to be protected by obtaining a review of the decree, and the reasons why the decree is not performed should be set forth in the bill.⁴

¹ Whiting v. Bank, 13 Pet., 6; Thomas v. Harvie's Heirs, 10 Wheaton, 146; Clark v. Killian, 103 U. S., 766; Eusminger v. Powers, 108 U. S., 292.

² Ensminger v. Powers, 108 U. S., 292.

³ Thomas v. Harvie's Heirs, 10 Wheaton, 146; Rubber Co. v. Goodyear, 9 Wall., 805; Ricker v. Powell, 100 U. S., 104.

⁴ Ricker v. Powell, 100 U. S., 104; Davis v. Speiden, 104 U. S., 83.

XCIX. A bill of review is the proper remedy when it is sought to set aside a decree on the ground of fraud in the procurement thereof.

Tenny v. Bank, 92 U. S., 454.

C. The right to take an appeal, to petition for a rehearing, or to file a bill of review, is ordinarily confined to the parties appearing of record.

If, after the entry of a decree and before the ap-

peal or rehearing is applied for, a party dies, his proper legal representative or the proper party succeeding to his interest should be made party on the record.

If one or more of a class represented on the record by a few of the same class, or by a trustee or other like representative, desires an appeal or a rehearing for the protection of his interests, and he wishes to be heard in respect thereto, he should apply to the circuit court by petition and notice to the adversary party for leave to become a party to the record for the desired purpose.

Sage v. R. R. Co., 93 U. S., 412; *Ex parte Cutting*, 94 U. S., 14; *Thompson v. Maxwell*, 95 U. S., 391.

CHAPTER XVI.

APPEAL TO SUPREME COURT.

CI. Save in suits touching patents, copyrights and the other special matters included in section 699 of the Revised Statutes, appeals to the supreme court will not lie unless the matter in controversy exceeds, exclusive of costs, the sum of \$5,000.

The limitation of amount does not apply to questions certified up by the judges under the provisions of sections 652 and 693 of the Revised Statutes.

18 Statutes at Large, 316.

CII. The appeal must be taken within two years after the entry of the decree appealed from. If the party entitled to appeal is an infant, insane or imprisoned, the time during which such disability lasts is not computed.

Revised Statutes, section 1008.

CIII. No appeal lies to an interlocutory order or decree, but only to a final order or decree.

If the decree without further order or action settles the title to property, or directs the performance of a specific act and requires it to be done forthwith, or directs a sale of property, which may be had without further action of the court, in these and like cases the decree is deemed to be final although the court may continue the case for making further orders therein.¹

If the decree, although in form final upon the question or questions involved, cannot be immedi-

ately carried into effect, and does not execute itself, but awaits further judicial action on part of the court, it is deemed to be interlocutory only.²

Revised Statutes, section 692.

¹ Decrees held final: *Ray v. Law*, 3 Cranch, 179; *Whiting v. Bank*, 13 Pet., 6; *Forgay v. Conrad*, 6 How., 201; *Wabash v. Beers*, 1 Black, 54; *Bronson v. R. R.*, 2 Black, 524; *Blossom v. R. R.*, 1 Wall., 655; *Thomson v. Dean*, 7 Wall., 342; *R. R. v. Bradley*, 7 Wall., 575; *French v. Shoemaker*, 12 Wall., 86; *Crosby v. Buchanan*, 23 Wall., 420; *Fuller v. Claffin*, 93 U. S., 14; *Ex parte R. R. Co.*, 95 U. S., 221; *Winthrop v. Meeker*, 109 U. S., 180; *First Nat. Bank v. Shedd*, 121 U. S., 74.

² Decrees held not final: *Hiriart v. Ballou*, 9 Pet., 156; *Lea v. Kelly*, 15 Pet., 213; *Young v. Smith*, 15 Pet., 287; *Perkins v. Fourniquet*, 6 How., 206; *Pulliam v. Christian*, 6 How., 209; *Craighead v. Wilson*, 18 How., 199; *Beebe v. Russel*, 19 How., 283; *Ogilvie v. Knox Ins. Co.*, 2 Black, 539; *Humiston v. Stainthorpe*, 2 Wall., 106; *Wheeler v. Harris*, 13 Wall., 51; *Thomas v. Woolbridge*, 23 Wall., 283; *R. R. Co. v. Swasey*, 23 Wall., 405; *Butterfield v. Usher*, 91 U. S., 246; *Bostwick v. Brinkerhoff*, 106 U. S., 3; *Grant v. Ins. Co.*, 106 U. S., 429; *Grant v. Ins. Co.*, 121 U. S., 118; *Bank v. Whitney*, 121 U. S., 284; *Parsons v. Bostwick*, 122 U. S., 112; *R. R. v. Simmons*, 123 U. S., 52.

CIV. During the term of the entry of the decree sought to be appealed from, such appeal may be prayed for in open court.

If not so allowed in open court, application therefor may be made to a judge of the circuit court or to any one of the justices of the supreme court.

Although such application may be made orally, the better practice is to submit a brief petition, properly entitled, reciting the entry of the decree and praying an appeal therefrom, and have indorsed thereon an allowance of the appeal, with a state-

ment of the amount of security to be given. This petition, with the bond in the requisite amount approved by the judge granting the appeal, should then be filed with the clerk.¹ A transcript of the record and proofs, duly certified, must be procured and filed in the supreme court.²

¹ Revised Statutes, section 692. *Hudgins v. Kemp*, 18 How., 530; *Sage v. R. R.*, 96 U. S., 712; *Brown v. McConnell*, 124 U. S., 489; *Stewart v. Masterson*, 124 U. S., 493; *Credit Co. v. R'y Co.*, 128 U. S., 258.

² Revised Statutes, section 698.

CV. If the appeal is allowed in open court at the term of the entry of the decree appealed from, and the security is given during that term, and the cause is properly docketed in the supreme court at the next term thereof, no citation need be issued.¹

If, however, the appeal is not allowed in open court at the term of the entry of the decree, or, if so allowed, the requisite security is not given at that term, or the cause is not docketed at the next term of the supreme court, a citation signed by a judge of the circuit or a justice of the supreme court must be served upon the opposite party or his counsel.²

A citation is a notice admonishing the adversary party that an appeal in the given case has been allowed, and that he must appear at the proper time in the supreme court if he wishes to be there heard in the cause, and is signed by a judge of the circuit court from which the appeal is taken or by one of the justices of the supreme court.³

¹ *Hudgins v. Kemp*, 18 How., 530; *Haskins v. R'y Co.*, 109 U. S., 106.

² *Bacon v. Hart*, 1 Black, 38; *Castro v. United States*, 3 Wall., 49; *Alviso v. United States*, 5 Wall., 824; *Dayton v. Lush*, 94 U. S., 112; *Haskins v. R'y Co.*, 109 U. S., 106; *R. R. Co. v. Blair*, 100 U. S., 661; *Hewitt v. Filbert*, 116 U. S., 142; *Goodwin v. Fox*, 120 U. S., 775; *Radford v. Folsom*, 128 U. S., 725.

³ Revised Statutes, section 999.

CVI. When a decree sought to be appealed from is entered thirty days or more before the first day of the next term of the supreme court, and the appeal is allowed before such term, the citation must be made returnable to the first day of such term of the supreme court and must be served before said first day.

If the decree is entered less than thirty days before said first day, and the appeal is allowed before said term, then the citation is returnable on the third Monday of said term and must be served before that day.

In other cases the citation is returnable on the first day of the term next after the allowance of the appeal, and must be served before that day.

Rules Supreme Court, section 5 of rule 8.

CVII. In suits wherein the decree was entered thirty days or more before the first day of the term of the supreme court to which the appeal is taken, the appellant must docket the case and file the record with the clerk of the supreme court within the first six days of the term.

If the decree was entered within thirty days of the commencement of the term to which the appeal is taken, then appellant must docket the cause and

file the record within the first thirty days of the term.

Unless so done the appellee may have the cause docketed and dismissed, in which event the appellant cannot afterwards docket the case and file the record, unless the court by order grants him leave so to do.

The appellee may at his option docket the case and file a copy of the record, if the appellant fails to do so within the times above stated, and the case will then stand for argument.

Rules Supreme Court, rule 9. *Grigsby v. Purcell*, 99 U. S., 505; *Killian v. Clark*, 111 U. S., 784; *Caillot v. Deetken*, 113 U. S., 215; *Fayolle v. R. R. Co.*, 124 U. S., 519.

CVIII. In appeals from California, Oregon, Nevada, Washington, New Mexico, Utah, Arizona, Montana and Idaho, the period of thirty days is extended to sixty.

Rules Supreme Court, rule 9, section 4.

CIX. When both parties appeal to the supreme court, a transcript of the record filed in the supreme court by either appellant may be used on both appeals.

Revised Statutes, section 1013.

CX. In cases wherein the appellant is entitled to and desires to stay the execution of the decree appealed from, he must procure the allowance of an appeal and give the required security within sixty days, Sundays exclusive, after the entry of the decree.¹

If the appeal is allowed within the sixty days, but the requisite security is not given within that time, the same, by permission of a justice of the supreme

court, may be afterwards given, and process on the decree be stayed.¹

If a *supersedeas* is not granted, the security on appeal is that the appellant will prosecute the appeal to effect, and answer all costs decreed against him.²

¹ Revised Statutes, sections 1007-1012; 18 Statutes at Large, 318; *Telegraph Co. v. Eyster*, 19 Wall., 419; *Kitchen v. Randolph*, 93 U. S., 86; *Sage v. R. R.*, 93 U. S., 412; *Danville v. Brown*, 128 U. S., 503.

² Revised Statutes, section 1000.

CXI. If a *supersedeas* is granted the judge granting the same must take good security by bond that the appellant will prosecute the appeal to effect and answer all damages and costs if he fail to make his plea good.¹

Where the decree is for the recovery of money not otherwise secured, the indemnity must be for the whole amount of the decree, including just damages for delay, costs and interest.²

Where the property in controversy follows the event of the suit, as in real actions or in mortgage foreclosures, or where the property or its proceeds, or a bond for its value, is in the custody or control of the court, the indemnity need be only in such an amount as is sufficient to secure the sum recovered for the use and detention of the property, the costs of the suit, just damages for delay, and interest and costs on the appeal.²

¹ Revised Statutes, section 1000.

² Rules Supreme Court, rule 29; *Kountze v. Hotel Co.*, 107 U. S., 378.

CXII. A *supersedeas* of its own force does not suspend the effect of a decree granting, refusing or dissolving an injunction. To accomplish this a justice or judge who took part in the decision of the cause may in his discretion, at the time of the allowance of the appeal, make an order suspending or modifying the injunction pending the appeal, upon such terms as to bond and otherwise as he may deem proper for the security of the rights of the opposite party.

Rule 93. *Hovey v. McDonald*, 109 U. S., 150.

CXIII. In cases wherein there are two or more parties bound by a joint decree, whether they be complainants or defendants, and an appeal is sought, all the complainants or all the defendants, as the case may be, must join in taking the appeal, unless a severance has been allowed.

If one or more of the parties bound by a joint decree desires to take an appeal for the protection of his interests, and the others bound with him will not unite in such appeal, then a petition setting forth the facts should be filed in the circuit court, notice of the hearing thereof being given to the parties refusing to appeal, and if upon the hearing it appears that the named parties refuse to unite in an appeal, an order may be made granting the right of appeal to the petitioner and barring the other parties from such right, such order being made for the benefit of the adversary party and to protect him from more than one appeal from the one decree.

Masterson v. Herndon, 10 Wall., 416.

CHAPTER XVII.

THE ENFORCEMENT OF PROCESS AND DECREE —
AUXILIARY PROCEEDINGS.

CXIV. When proper cause therefor exists, the court may enforce obedience to its process or orders by the issuance of writs of attachment for the arrest of the person of the disobedient party, or by the issuance of writs of sequestration for the seizure of his property.

Rule 8.

CXV. Every person who, not being a party in a cause, has obtained an order, or in whose favor an order has been made, is entitled to enforce obedience to the same as if he were a party to the suit; and every person, not a party to the cause, against whom obedience to any order of the court may be enforced, shall be liable to the same process for enforcing obedience to such order that he would be were he a party to the cause.

Rule 10.

CXVI. In those states wherein judgments in the courts of the state are liens upon the property of the debtor, the like effect is given to judgments rendered in the United States courts. Hence in such states a decree adjudging a sum certain to be due and ordering payment, being in effect a judgment, becomes a lien upon the property of the debtor.¹

Prior to the adoption of the act of August 1, 1888, it was held that the lien was co-extensive with the jurisdiction of the court rendering the judgment or decree.

By the provisions of that act it is declared, that judgments or decrees rendered in the circuit or district courts of the United States shall be liens on property throughout the state in the same manner, to the same extent, and under the same conditions only, as if such judgments ordered had been rendered by a court of general jurisdiction of such state; provided, however, that whenever the laws of a state require a judgment or decree of a state court to be registered, docketed, indexed, or any other thing to be done in a particular manner, or in a certain office or county, or in the state of Louisiana in any parish, before the lien attaches, the provisions of the act should be applicable to the judgments and decrees of the United States courts in such state, only when the laws of the state authorized the judgments and decrees of the United States courts to be registered, recorded, docketed, indexed or otherwise conformed to the requirements of the state law.²

¹ *Massingill v. Downs*, 7 How., 760; *Ward v. Chamberlain*, 2 Black, 430.

² 25 Statutes at Large, 357.

CXVII. Where, by the terms of the decree, specific property is ordered to be sold, as in mortgage foreclosures and like cases, it is customary to direct such sale to be made by a master named

in the decree, which should also provide for the manner and terms of the sale, either by directing the same to be made according to the provisions of the state statutes governing sales of like character, or by setting forth the length of notice to be given, the manner of giving same, the place of sale, and the terms upon which the same is to be made.

A certified copy of the decree should be furnished to the master named, as the evidence of his authority to proceed in the premises.

In conducting such sale the master must fully observe and carry out the provisions of the decree touching such sale, and, when made, must promptly make and return into court a report in writing of the proceedings had.

If the property sold was required to be appraised as a condition of sale, the report should show the proceedings had in this regard, also the notice of sale given, the time and place of sale, whether the property was sold in parcels or as a whole, and to whom and for what sum the sale was made.

Upon the filing of the report of sale, parties interested have thirty days in which to except thereto.

If exceptions to such sale are filed and for cause sustained, or if the court of its own motion deems the sale to be faulty in form, or inequitable in substance, the same will be set aside and a resale be ordered.

If exceptions are not filed and cause to the contrary does not appear, the court, at any time after

the expiration of the thirty days, may approve the report and confirm the sale, and order a conveyance of the property executed by the master to be delivered to the purchaser. If the sale is subject to redemption, the conveyance cannot be delivered until the expiration of the time of redemption. In such cases the master should execute a certificate of purchase and deliver the same to the purchaser. Upon the expiration of the period of redemption, if redemption has not been made, a brief report showing the fact, with the proper master's deed, should be submitted to the court for its approval, and for the order of delivery.

If redemption of the property has been made, then a report showing such fact should be returned by the master, upon which the proper orders and entries will be made by the court.

CXVIII. If by decree the payment of money be ordered the same may be enforced by the issuance of a writ of execution in the form proper in an action at law in *assumpsit*.¹ If there are two or more districts in a state the writ can be executed in either of the districts.

If the decree be for the performance of a specific act, as for the execution of a conveyance of land, the delivering up or cancellation of deeds or contracts, or other like act, the decree must prescribe the time within which the act must be done, and, in default thereof, upon affidavit of the complainant showing such default, the clerk issues a writ of at-

tachment against the delinquent party, from which he cannot be released except upon full compliance with the decree and the payment of all costs, unless the court or judge, upon motion and affidavit, shall enlarge the time for performance.¹

If the delinquent party cannot be found a writ of sequestration issues against his estate to compel obedience to the decree.¹

If the decree is for the delivery of possession of property, upon proof made by affidavit that the party refuses obedience to the decree upon demand made, a writ of assistance issues to enforce the delivery of possession.²

This is the appropriate remedy to enforce the delivery of possession of property sold upon foreclosure of mortgage, after the delivery of the master's deed.²

If a party is ousted from or deprived of the possession of property by force of a decree which is subsequently reversed, the court, upon entry of the order of reversal, will make all necessary orders for the restoration of the property, or its proceeds if sold, to the party wrongfully deprived thereof, and when necessary will issue a writ of restitution for that purpose.

¹ Rule 8.

² Rule 9. *Terrell v. Allison*, 21 Wall., 289.

CXIX. Upon the rendition of an interlocutory or final order or decree, if the defendant refuses or neglects to obey the same and cannot be found within

the jurisdiction of the court, so that obedience to the decree may be enforced by attachment of his person, a writ of sequestration may be issued against the estate of such delinquent defendant for the purpose of compelling obedience to the decree.

The proper practice is to file in the clerk's office the affidavit of complainant showing the non-compliance on part of defendant of the order or decree, and thereupon to procure the issuance by the clerk of a writ of attachment for the person of the defendant, which should be placed in the hands of the marshal for service. If service thereof cannot be had, by reason of not finding the defendant, the marshal must make return of such fact upon the writ of attachment, and thereupon complainant should file a petition in the cause reciting the rendition of the decree, the failure of defendant to obey the same, the issuance of the writ of attachment and the return thereof unserved because the defendant cannot be found, and the fact that the defendant has property within the jurisdiction of the court, and submit the same to the court for its order thereon.

The writ is directed to the party or parties selected to act as sequestrators, directing and commanding them to take possession of the estate, or named portions thereof, of the delinquent defendant, and to hold the same, and the proceeds, rents and profits thereof, until the further order of court.

The rents and profits, and, if sold by order of court, the proceeds of the property, if sequestered,

may be applied to the satisfaction of the decree, although primarily the object sought by the seizure of the property is the compelling the defendant to perform or yield obedience to the order or decree.

Rules 7, 8.

CXX. Under the general rule that a court of equity has jurisdiction to enforce its decrees, co-extensive with its jurisdiction to hear and decree the rights of the parties, it is held that the circuit court has full power, not only to issue all proper process, but to entertain all ancillary or auxiliary proceedings needed to fully enforce its decrees.

Jurisdiction over bills and proceedings of this character is not defeated by the citizenship of the parties thereto, as the jurisdiction is sustained by that of the original cause.

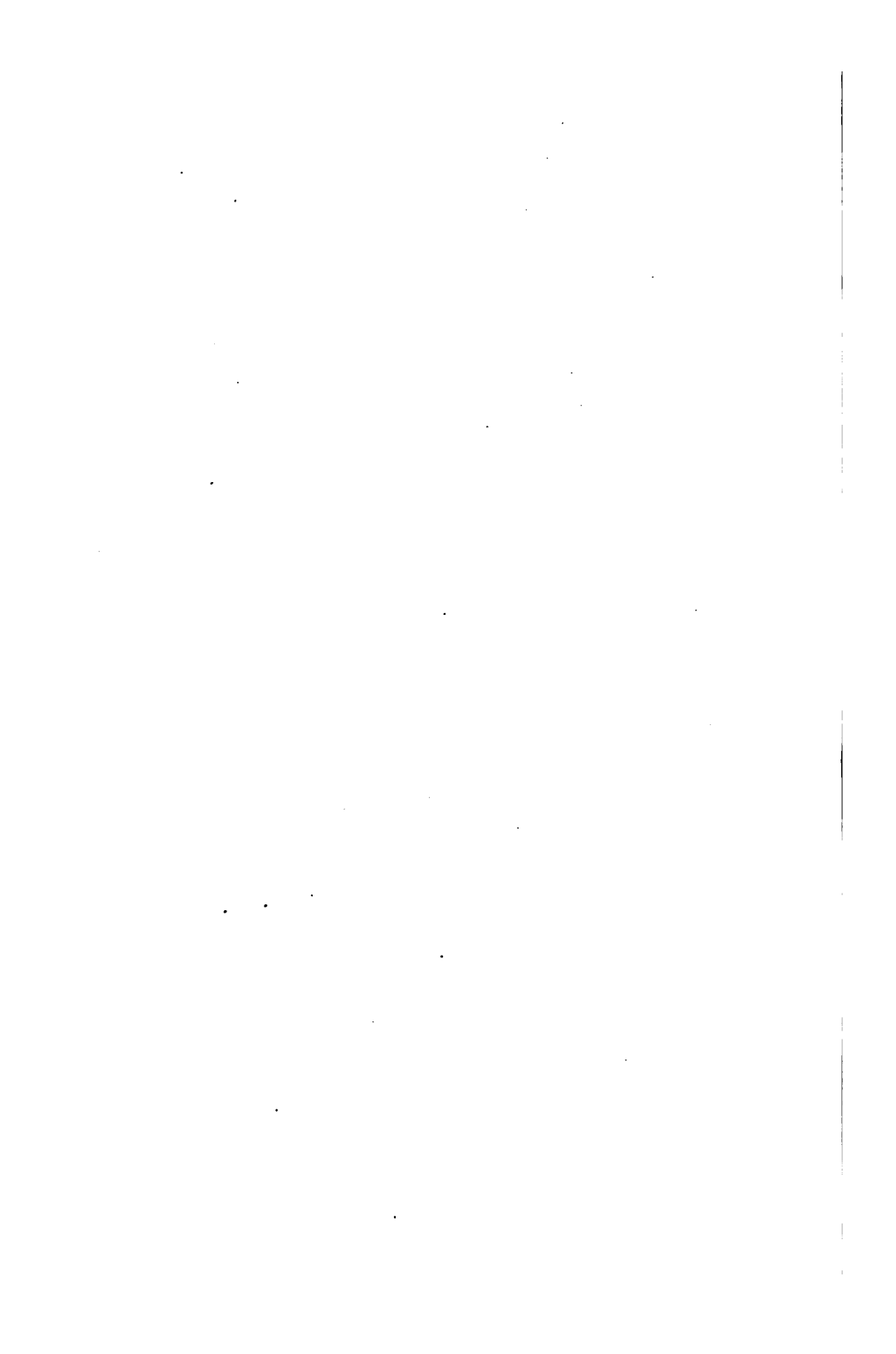
Minnesota Co. v. St. Paul Co., 2 Wall., 609; *Terrell v. Allison*, 21 Wall., 239; *Krippendorf v. Hyde*, 110 U. S., 276; *R. R. Co. v. R. R. Co.*, 111 U. S., 505; *Dewey v. Coal Co.*, 123 U. S., 329.

CXXI. For the purpose of preserving in proper form the evidence of the proceedings had in suits in equity, upon the termination of a cause, a final record thereof containing the process, return of service, the pleadings, the decree and all other proceedings necessary to show the jurisdiction of the court, the regularity of the proceedings, and the results obtained, should be duly entered upon the records of the court.

Revised Statutes, section 750.

CXXII. Under the provisions of section 918 of the Revised Statutes, the circuit courts have full power to make rules regulating the practice in suits in equity, not inconsistent with the laws of the United States or the rules prescribed by the supreme court.

Regard must therefore be had in each district to the special rules, if any, adopted by the circuit court for the district, touching the preparation and bringing to trial of suits in equity.



RULES OF PRACTICE
FOR THE
COURTS OF EQUITY
OF
THE UNITED STATES.

RULE I.

Court always open.—The circuit courts, as courts of equity, shall be deemed always open for the purpose of filing bills, answers and other pleadings; for issuing and returning mesne and final process and commissions; and for making and directing all interlocutory motions, orders, rules, and other proceedings, preparatory to hearing of all causes upon their merits.

RULE II.

Rule day.—The clerk's office shall be open, and the clerk shall be in attendance therein, on the first Monday of every month, for the purpose of receiving, entering, entertaining and disposing of all motions, rules, orders and other proceedings, which are grantable of course and applied for, or had by the parties or their solicitors, in all causes pending in equity, in pursuance of the rules hereby prescribed.

RULE III.

Orders at chambers.— Any judge of the circuit court, as well in vacation as in term, may at chambers, or on the rule days, at the clerk's office, make and direct all such interlocutory orders, rules and other proceedings, preparatory to the hearing of all causes upon their merits, in the same manner and with the same effect as the circuit court could make and direct the same in term, reasonable notice of the application therefor being first given to the adverse party or his solicitor to appear and show cause to the contrary at the next rule day thereafter, unless some other time is assigned by the judge for the hearing.

RULE IV.

Order book — Entry of motions.— All motions, rules, orders and other proceedings, made and directed at chambers, or on rule days at the clerk's office, whether special or of course, shall be entered by the clerk in an order book, to be kept at the clerk's office, on the day when they are made and directed; which book shall be open at all office hours to the free inspection of the parties in any suit in equity, and their solicitors. And except in cases where personal or other notice is specially required or directed, such entry in the order book shall be deemed sufficient notice to the parties and their solicitors, without further service thereof, of all orders, rules, acts, notices and other proceedings entered in such order book, touching any and all the matters in the suits to and in which they are parties and solicitors. And notice to the solicitors shall be deemed notice to the parties for whom they appear and whom they represent, in all cases where personal notice on the parties is not otherwise specially required. Where the solicitors for all the parties in a suit reside in or near the same town or city, the judges of the circuit court may, by rule, abridge the time for notice of rules, orders, or other proceedings not requiring personal service on the parties, in their discretion.

RULE V.

Motions grantable by clerk.— All motions and applications in the clerk's office for the issuing of mesne process and final process to enforce and execute decrees; for filing bills, answers, pleas, demurrers and other pleadings; for making amendments to bills and answers; for taking bills *pro confesso*; for filing exceptions; and for other proceedings in the clerk's office which do not, by the rules hereinafter prescribed, require any allowance or order of the court or of any judge thereof, shall be deemed motions and applications grantable of course by the clerk of the court. But the same may be suspended, or altered, or rescinded, by any judge of the court, upon special cause shown.

RULE VI.

Motions not of course.— All motions for rules or orders or other proceedings which are not grantable of course or without notice shall, unless a different time be assigned by a judge of the court, be made on a rule day, and entered in the order book, and shall be heard at the rule day next after that on which the motion is made. And if the adverse party, or his solicitor, shall not then appear, or shall not show good cause against the same, the motion may be heard by any judge of the court *ex parte*, and granted, as if not objected to, or refused, in his discretion.

RULE VII.

Mesne powers.— The process of subpoena shall constitute the proper mesne process in all suits in equity, in the first instance, to require the defendant to appear and answer the exigency of the bill; and, unless otherwise provided in these rules, or specially ordered by the circuit court, a writ of attachment, and, if the defendant cannot be found, a writ of sequestration, or a writ of assistance to enforce a delivery of possession, as the case may require, shall be the proper process to issue for the purpose of compelling obedience to any interlocutory or final order or decree of the court.

RULE VIII.

Final process.—Final process to execute any decree may, if the decree be solely for the payment of money, be by a writ of execution in the form used in the circuit court in suits at common law in actions of *assumpsit*. If the decree be for the performance of any specific act, as, for example, for the execution of a conveyance of land or the delivering up of deeds or other documents, the decree shall, in all cases, prescribe the time within which the act shall be done, of which the defendant shall be bound, without further service, to take notice; and upon affidavit of the plaintiff, filed in the clerk's office, that the same has not been complied with within the prescribed time, the clerk shall issue a writ of attachment against the delinquent party, from which, if attached thereon, he shall not be discharged, unless upon a full compliance with the decree and the payment of all costs, or upon a special order of the court, or of a judge thereof, upon motion and affidavit, enlarging the time for the performance thereof. If the delinquent party cannot be found, a writ of sequestration shall issue against his estate upon the return of *non est inventus*, to compel obedience to the decree.

RULE IX.

Writ of assistance.—When any decree or order is for the delivery of possession, upon proof made by affidavit of a demand and refusal to obey the decree or order, the party prosecuting the same shall be entitled to a writ of assistance from the clerk of the court.

RULE X.

Persons not parties.—Every person, not being a party in any cause, who has obtained an order, or in whose favor an order shall have been made, shall be enabled to enforce obedience to such order by the same process as if he were a party to the cause; and every person, not being a party in any cause, against whom obedience to any order of the court may be enforced, shall be liable to the same process for enforcing obedience to such orders as if he were a party in the cause.

RULE XI.

Issuance of subpoena.— No process of subpoena shall issue from the clerk's office in any suit in equity until the bill is filed in the office.

RULE XII.

Return of subpoena.— Whenever a bill is filed, the clerk shall issue the process of subpoena thereon, as of course, upon the application of the plaintiff, which shall be returnable into the clerk's office the next rule day, or the next rule day but one, at the election of the plaintiff, occurring after twenty days from the time of the issuing thereof. At the bottom of the subpoena shall be placed a memorandum that the defendant is to enter his appearance in the suit in the clerk's office on or before the day at which the writ is returnable; otherwise the bill may be taken *pro confesso*. Where there are more than one defendant, a writ of subpoena may, at the election of the plaintiff, be sued out separately for each defendant, except in the case of husband and wife defendants, or a joint subpoena against all the defendants.

RULE XIII.

Manner of service of subpoena.— The service of all subpoenas shall be by a delivery of a copy thereof by the officer serving the same to the defendant personally, or by leaving a copy thereof at the dwelling-house or usual place of abode of each defendant, with some adult person who is a member or resident in the family.

RULE XIV.

Alias subpoena.— Whenever any subpoena shall be returned not executed as to any defendant, the plaintiff shall be entitled to another subpoena, *toties quoties*, against each defendant, if he shall require it, until due service is made.

RULE XV.

By whom served.— The service of all process, mesne and final, shall be by the marshal of the district, or his deputy, or by some other person specially appointed by the court for that purpose, and not otherwise. In the latter case, the person serving the process shall make affidavit thereof.

RULE XVI.

Docketing cause.— Upon the return of the subpoena as served and executed upon any defendant, the clerk shall enter the suit upon his docket as pending in the court, and shall state the time of the entry.

RULE XVII.

Appearance, when and how entered.— The appearance day of the defendant shall be the rule day to which the subpoena is made returnable, provided he has been served with the process twenty days before that day; otherwise his appearance day shall be the next rule day succeeding the rule day when the process is returnable.

The appearance of the defendant, either personally or by his solicitor, shall be entered in the order book on the day thereof by the clerk.

RULE XVIII.

Default and decree pro confesso.— It shall be the duty of the defendant, unless the time shall be otherwise enlarged, for cause shown, by a judge of the court, upon motion for that purpose, to file his plea, demurrer or answer to the bill in the clerk's office on the rule day next succeeding that of entering his appearance. In default thereof the plaintiff may, at his election, enter an order (as of course) in the order book that the bill be taken *pro confesso*; and thereupon the cause shall be proceeded in *ex parte*, and the matter of the bill may be decreed by the court at any time after the expiration

of thirty days from and after the entry of said order if the same can be done without an answer, and is proper to be decreed; or the plaintiff, if he requires any discovery or answer to enable him to obtain a proper decree, shall be entitled to process of attachment against the defendant to compel an answer, and the defendant shall not, when arrested upon such process, be discharged therefrom, unless upon filing his answer, or otherwise complying with such order as the court or a judge thereof may direct, as to pleading to or fully answering the bill, within a period to be fixed by the court or judge, and undertaking to speed the cause.

RULE XIX.

Decree pro confesso — Default set aside.— When the bill is taken *pro confesso* the court may proceed to a decree at any time after the expiration of thirty days from and after the entry of the order to take the bill *pro confesso*, and such decree rendered shall be deemed absolute, unless the court shall, at the same term, set aside the same, or enlarge the time for filing the answer, upon cause shown, upon motion and affidavit of the defendant. And no such motion shall be granted unless upon the payment of the costs of the plaintiff in the suit up to that time, or such part thereof as the court shall deem reasonable, and unless the defendant shall undertake to file his answer within such time as the court shall direct, and submit to such other terms as the court shall direct, for the purpose of speeding the cause.

RULE XX.

Bill, form of.— Every bill, in the introductory part thereof, shall contain the names, places of abode and citizenship of all the parties, plaintiffs and defendants, by and against whom the bill is brought. The form, in substance, shall be as follows: "To the judges of the circuit court of the United States for the district of —: A. B., of —, and a citizen of the state of —, brings this his bill against C. D., of —, and a

citizen of the state of —, and E. F., of —, and a citizen of the state of —. And thereupon your orator complains and says that," etc.

RULE XXI.

Clauses omitted from bill.— The plaintiff, in his bill, shall be at liberty to omit, at his option, the part which is usually called the common confederacy clause of the bill, averring a confederacy between the defendants to injure or defraud the plaintiff; also what is commonly called the charging part of the bill, setting forth the matters or excuses which the defendant is supposed to intend to set up by way of defense to the bill; also what is commonly called the jurisdiction clause of the bill, that the acts complained of are contrary to equity, and that the defendant is without any remedy at law; and the bill shall not be demurrable therefor. And the plaintiff may, in the narrative or starting part of his bill, state and avoid, by counter-averments, at his option, any matter or thing which he supposes will be insisted upon by the defendant by way of defense or excuse to the case made by the plaintiff for relief. The prayer of the bill shall ask the special relief to which the plaintiff supposes himself entitled, and also shall contain a prayer for general relief; and if an injunction, or a writ of *ne exeat regno*, or any other special order, pending the suit, is required, it shall be specially asked for.

RULE XXII.

Parties beyond jurisdiction.— If any persons, other than those named as defendants in the bill, shall appear to be necessary or proper parties thereto, the bill shall aver the reason why they are not made parties, by showing them to be without the jurisdiction of the court, or that they cannot be joined without ousting the jurisdiction of the court as to the other parties. And as to persons who are without the jurisdiction and may properly be made parties, the bill may pray that process may issue to make them parties to the bill if they should come within the jurisdiction.

RULE XXIII.

Prayer for process.—The prayer for process of subpoena in the bill shall contain the names of the defendants named in the introductory part of the bill, and if any of them are known to be infants under age, or otherwise under guardianship, shall state the fact so that the court may take order thereon, as justice may require, upon the return of the process. If an injunction, or a writ of *ne exeat regno*, or any other special order, pending the suit, is asked for in the prayer for relief, that shall be sufficient, without repeating the same in the prayer for process.

RULE XXIV.

Counsel must sign bill.—Every bill shall contain the signature of counsel annexed to it, which shall be considered as an affirmation on his part that, upon the instructions given to him and the case laid before him, there is good ground for the suit in the manner in which it is framed.

RULE XXV.

Costs—Purposes of taxation.—In order to prevent unnecessary costs and expenses, and to promote brevity, succinctness and directness in the allegations of bills and answers, the regular taxable costs for every bill and answer shall in no case exceed the sum which is allowed in the state court of chancery in the district, if any there be; but if there be none, then it shall not exceed the sum of three dollars for every bill or answer.

RULE XXVI.

Contents of bill—Exceptions.—Every bill shall be expressed in as brief and succinct terms as it reasonably can be, and shall contain no unnecessary recitals of deeds, documents, contracts or other instruments, *in hæc verba*, or any other impertinent matter, or any scandalous matter not relevant to the suit. If it does, it may, on exceptions, be referred to a master

by any judge of the court, for impertinence or scandal; and if so found by him, the matter shall be expunged at the expense of the plaintiff, and he shall pay to the defendant all his costs in the suit up to that time, unless the court or a judge thereof shall otherwise order. If the master shall report that the bill is not scandalous or impertinent, the plaintiff shall be entitled to all costs occasioned by the reference.

RULE XXVII.

Exceptions for scandal or impertinence.—No order shall be made by any judge for referring any bill, answer or pleading, or other matter or proceeding, depending before the court, for scandal or impertinence, unless exceptions are taken in writing and signed by counsel, describing the particular passages which are considered to be scandalous or impertinent; nor unless the exceptions shall be filed on or before the next rule day after the process on the bill shall be returnable, or after the answer or pleading is filed. And such order, when obtained, shall be considered as abandoned, unless the party obtaining the order shall, without any unnecessary delay, procure the master to examine and report on the same on or before the next succeeding rule day, or the master shall certify that further time is necessary for him to complete the examination.

RULE XXVIII.

Bills amended — Costs paid and copy furnished.—The plaintiff shall be at liberty, as a matter of course, and without payment of costs, to amend his bill, in any matters whatsoever, before any copy has been taken out of the clerk's office, and in any small matters afterwards, such as filling blanks, correcting errors of dates, misnomer of parties, misdescription of premises, clerical errors, and generally in matters of form. But if he amend in a material point, as he may do of course, after a copy has been so taken, before any answer or plea or demurrer to the bill, he shall pay to the defendant the costs occasioned thereby, and shall, without delay, furnish

him a fair copy thereof, free of expense, with suitable references to the places where the same are to be inserted. And if the amendments are numerous, he shall furnish, in like manner, to the defendant, a copy of the whole bill as amended; and if there be more than one defendant, a copy shall be furnished to each defendant affected thereby.

RULE XXIX.

Amendment of bill.— After an answer or plea or demurrer is put in, and before replication, the plaintiff may, upon motion or petition, without notice, obtain an order from any judge of the court to amend his bill on or before the next succeeding rule day, upon payment of costs or without payment of costs, as the court or a judge thereof may in his discretion direct. But after replication filed, the plaintiff shall not be permitted to withdraw it and to amend his bill, except upon a special order of a judge of the court, upon motion or petition, after due notice to the other party, and upon proof by affidavit that the same is not made for the purpose of vexation or delay, or that the matter of the proposed amendment is material, and could not with reasonable diligence have been sooner introduced into the bill, and upon the plaintiff's submitting to such other terms as may be imposed by the judge for speeding the cause.

RULE XXX.

Abandonment and proceeding thereon.— If the plaintiff so obtaining any order to amend his bill after answer, or plea, or demurrer, or after replication, shall not file his amendments or amended bill, as the case may require, in the clerk's office on or before the next succeeding rule day, he shall be considered to have abandoned the same, and the cause shall proceed as if no application for any amendment had been made.

RULE XXXI.

Certificate of counsel — Affidavit.— No demurrer or plea shall be allowed to be filed to any bill unless upon a certificate

of counsel that in his opinion it is well founded in point of law, and supported by the affidavit of the defendant that it is not interposed for delay; and if a plea, that it is true in point of fact.

RULE XXXII.

Defendant may demur, plead or answer.—The defendant may at any time before the bill is taken for confessed, or afterward with the leave of the court, demur or plead to the whole bill, or to part of it, and he may demur to part, plead to part and answer to the residue; but in every case in which the bill specially charges fraud or combination, a plea to such part must be accompanied with an answer fortifying the plea and explicitly denying the fraud and combination, and the facts on which the charge is founded.

RULE XXXIII.

Setting down for argument.—The plaintiff may set down the demurrer or plea to be argued, or he may take issue on the plea. If, upon an issue, the facts stated in the plea be determined for the defendant, they shall avail him as far as in law and equity they ought to avail him.

RULE XXXIV.

Proceedings on overruling demurrer or plea.—If, upon the hearing, any demurrer or plea is overruled, the plaintiff shall be entitled to his costs in the cause up to that period, unless the court shall be satisfied that the defendant has good ground, in point of law or fact, to interpose the same, and it was not interposed vexatiously or for delay. And, upon the overruling of any plea or demurrer, the defendant shall be assigned to answer the bill, or so much thereof as is covered by the plea or demurrer, the next succeeding rule day, or at such other period as, consistently with justice and the rights of the defendant, the same can, in the judgment of the court, be reasonably done; in default whereof, the bill shall be taken against him *pro confesso*, and the matter thereof proceeded in and decreed accordingly.

RULE XXXV.

If sustained — Amendment of bill.— If, upon the hearing, any demurrer or plea shall be allowed, the defendant shall be entitled to his costs. But the court may, in its discretion, upon motion of the plaintiff, allow him to amend his bill, upon such terms as it shall deem reasonable.

RULE XXXVI.

Extent of demurrer or plea.— No demurrer or plea shall be held bad and overruled upon argument, only because such demurrer or plea shall not cover so much of the bill as it might by law have extended to.

RULE XXXVII.

Answer as affecting demurrer or plea.— No demurrer or plea shall be held bad and overruled upon argument, only because the answer of the defendant may extend to some part of the same matter as may be covered by such demurrer or plea.

RULE XXXVIII.

Failure to reply or to set down for argument.— If the plaintiff shall not reply to any plea, or set down any plea or demurrer for argument, on the rule day when the same is filed, or on the next succeeding rule day, he shall be deemed to admit the truth and sufficiency thereof, and his bill shall be dismissed as of course unless a judge of the court shall allow him further time for the purpose.

RULE XXXIX.

Answer.— The rule that if a defendant submits to answer, he shall answer fully to all the matters of the bill shall no longer apply in cases where he might by plea protect himself from such answer and discovery. And the defendant shall be entitled in all cases, by answer, to insist upon all matters of defense (not being matters of abatement, or to the character of.

the parties, or matters of form), in bar of or to the merits of the bill, of which he may be entitled to avail himself by a plea in bar; and in such answer he shall not be compellable to answer any other matters than he would be compellable to answer and discover upon filing a plea in bar and an answer in support of such plea, touching the matters set forth in the bill, to avoid or repel the bar or defense. Thus, for example, a *bona fide* purchaser for a valuable consideration, without notice, may set up that defense by way of answer instead of plea, and shall be entitled to the same protection and shall not be compellable to make any further answer or discovery of his title than he would be in any answer in support of such plea.

RULE XL.

Interrogatories.—It shall not hereafter be necessary to interrogate a defendant specially and particularly upon any statement in the bill, unless the complainant desires to do so to obtain a discovery.

RULE XLI.

Interrogatories continued.—(1) The interrogatories contained in the interrogating part of the bill shall be divided as conveniently as may be from each other, and numbered consecutively 1, 2, 3, etc.; and the interrogatories which each defendant is required to answer shall be specified in a note at the foot of the bill, in the form or to the effect following, that is to say: "The defendant (A. B.) is required to answer the interrogatories numbered respectively 1, 2, 3," etc.; and the office copy of the bill taken by each defendant shall not contain any interrogatories except those which such defendant is so required to answer, unless such defendant shall require to be furnished with a copy of the whole bill.

(2) If the complainant, in his bill, shall waive an answer under oath, or shall only require an answer under oath with regard to certain specified interrogatories, the answer of the defendant, though under oath, except such part thereof as shall be directly responsive to such interrogatories, shall not be

evidence in his favor, unless the cause be set down for hearing on bill and answer only; but may nevertheless be used as an affidavit, with the same effect as heretofore, on a motion to grant or dissolve an injunction, or on any other incidental motion in the cause; but this shall not prevent a defendant from becoming a witness in his own behalf under section 3 of the act of congress of July 2, 1864.

RULE XLII.

Note specifying interrogatories to be answered, part of bill.—The note at the foot of the bill, specifying the interrogatories which each defendant is required to answer, shall be considered and treated as part of the bill, and the addition of any such note to the bill, or any alteration in or addition to such note, after the bill is filed, shall be considered and treated as an amendment of the bill.

RULE XLIII.

Form when interrogatories are used.—Instead of the words of the bill now in use, preceding the interrogating part thereof, and beginning with the words: "To the end, therefore," there shall hereafter be used words in the form or to the effect following: "To the end, therefore, that the said defendants may, if they can, show why your orator should not have the relief hereby prayed, and may, upon their several and respective corporal oaths, and according to the best and utmost of their several and respective knowledge, remembrance, information and belief, full, true, direct and perfect answer make to such of the several interrogatories hereinafter numbered and set forth as by the note hereunder written they are respectively required to answer; that is to say —

"1. Whether, etc.

"2. Whether," etc.

RULE XLIV.

When interrogatories need not be answered.—A defendant shall be at liberty, by answer, to decline answering

any interrogatory, or part of an interrogatory, from answering which he might have protected himself by demurrer; and he shall be at liberty so to decline, notwithstanding he shall answer other parts of the bill from which he might have protected himself by demurrer.

RULE XLV.

Special replication not allowed.—No special replication to any answer shall be filed. But if any matter alleged in the answer shall make it necessary for the plaintiff to amend his bill, he may have leave to amend the same with or without payment of costs, as the court, or a judge thereof, may in his discretion direct.

RULE XLVI.

Answer to amended bill.—In every case where an amendment shall be made after answer filed, the defendant shall put in a new or supplemental answer on or before the next succeeding rule day after that on which the amendment or bill is filed, unless the time is enlarged or otherwise ordered by a judge of the court; and upon his default, the like proceedings may be had as in cases of an omission to put in an answer.

RULE XLVII.

Omission of parties.—In all cases where it shall appear to the court that persons, who might otherwise be deemed necessary or proper parties to the suit, cannot be made parties by reason of their being out of the jurisdiction of the court, or incapable otherwise of being made parties, or because their joinder would oust the jurisdiction of the court as to the parties before the court, the court may in their discretion proceed in the cause without making such persons parties; and in such cases the decree shall be without prejudice to the rights of the absent parties.

RULE XLVIII.

Parties, when numerous.—Where the parties on either side are very numerous, and cannot, without manifest incon-

venience and oppressive delays in the suit, be all brought before it, the court, in its discretion, may dispense with making all of them parties, and may proceed in the suit, having sufficient parties before it to represent all the adverse interests of the plaintiffs and the defendants in the suit properly before it. But, in such cases, the decree shall be without prejudice to the rights and claims of all the absent parties.

RULE XLIX.

Suits by trustees.— In all suits concerning real estate which is vested in trustees by devise, and such trustees are competent to sell and give discharges for the proceeds of the sale, and for the rents and profits of the estate, such trustees shall represent the persons beneficially interested in the estate, or the proceeds, or the rents and profits, in the same manner and to the same extent as the executors or administrators in suits concerning personal estate represent the persons beneficially interested in such personal estate; and in such cases it shall not be necessary to make the persons beneficially interested in such real estate, or rents and profits, parties to the suit; but the court may, upon consideration of the matter on the hearing, if it shall so think fit, order such persons to be made parties.

RULE L.

Heir, when party, and when not.— In suits to execute the trusts of a will, it shall not be necessary to make the heir at law a party; but the plaintiff shall be at liberty to make the heir at law a party where he desires to have the will established against him.

RULE LI.

Joint and several demands.— In all cases in which the plaintiff has a joint and several demand against several persons, either as principals or sureties, it shall not be necessary to bring before the court as parties to a suit concerning such demand all the persons liable thereto; but the plaintiff may proceed against one or more of the persons severally liable.

RULE LII.

Defect of parties.— Where the defendant shall, by his answer, suggest that the bill is defective for want of parties, the plaintiff shall be at liberty, within fourteen days after answer filed, to set down the cause for argument upon that objection only; and the purpose for which the same is so set down shall be notified by an entry, to be made in the clerk's order book, in the form or to the effect following (that is to say): "Set down upon the defendant's objection for want of parties." And where the plaintiff shall not so set down his cause, but shall proceed therewith to a hearing, notwithstanding an objection for want of parties taken by the answer, he shall not, at the hearing of the cause, if the defendant's objection shall then be allowed, be entitled as of course to an order for liberty to amend his bill by adding parties. But the court, if it thinks fit, shall be at liberty to dismiss the bill.

RULE LIII.

Objection of defect of parties.— If a defendant shall, at the hearing of a cause, object that a suit is defective for want of parties, not having by plea or answer taken the objection, and therein specified by name or description of parties to whom the objection applies, the court, if it shall think fit, shall be at liberty to make a decree saving the rights of the absent parties.

RULE LIV.

Nominal parties.— Where no account, payment, conveyance or other direct relief is sought against a party to a suit, not being an infant, the party, upon service of the subpoena upon him, need not appear and answer the bill, unless the plaintiff specially requires him so to do by the prayer of his bill; but he may appear and answer at his option; and if he does not appear and answer he shall be bound by all the proceedings in the cause. If the plaintiff shall require him to appear and answer he shall be entitled to the costs of all the proceedings against him, unless the court shall otherwise direct.

RULE LV.

Injunctions.— Whenever an injunction is asked for by the bill to stay proceedings at law, if the defendant do not enter his appearance, and plead, demur or answer to the same within the time prescribed therefor by these rules, the plaintiff shall be entitled, as of course, upon motion, without notice, to such injunction. But special injunctions shall be grantable only upon due notice to the other party by the court in term, or by a judge thereof in vacation, after a hearing, which may be *ex parte*, if the adverse party does not appear at the time and place ordered. In every case where an injunction — either the common injunction or a special injunction — is awarded in vacation, it shall, unless previously dissolved by the judge granting the same, continue until the next term of the court, or until it is dissolved by some other order of the court.

RULE LVI.

Revivor of suit.— Whenever a suit in equity shall become abated by the death of either party, or by any other event, the same may be revived by a bill of revivor, or a bill in the nature of a bill of revivor, as the circumstances of the case may require, filed by the proper parties entitled to revive the same, which bill may be filed in the clerk's office at any time, and, upon suggestion of the facts, the proper process of subpoena shall, as of course, be issued by the clerk requiring the proper representatives of the other party to appear and show cause, if any they have, why the cause should not be revived. And if no cause shall be shown at the next rule day which shall occur after fourteen days from the time of the service of the same process, the suit shall stand revived, as of course.

RULE LVII.

Supplemental bill.— Whenever a suit in equity shall become defective from any event happening after the filing of the bill, as, for example, by change of interest in the parties, or for any other reason, a supplemental bill, or a bill in the

nature of a supplemental bill, may be necessary to be filed in the cause, leave to file the same may be granted by any judge of the court on any rule day, upon proper cause shown and due notice to the other party. And if leave is granted to file such supplemental bill, the defendant shall demur, plead or answer thereto on the next succeeding rule day after the supplemental bill is filed in the clerk's office, unless some other time shall be assigned by a judge of the court.

RULE LVIII.

Bills of revivor or supplement.— It shall not be necessary in any bill of revivor or supplemental bill to set forth any of the statements in the original suit, unless the special circumstances of the case may require it.

RULE LIX.

Answer verified before whom.— Every defendant may swear to his answer before any justice or judge of any court of the United States, or before any commissioner appointed by any circuit court to take testimony or depositions, or before any master in chancery appointed by any circuit court, or before any judge of any court of a state or territory, or notary public.

RULE LX.

Amendment of answer.— After an answer is put in it may be amended as of course in any matter of form or by filling up a blank, or correcting a date, or reference to a document, or other small matter, and be resworn, at any time before a replication is put in, or the cause is set down for a hearing upon bill and answer. But after replication or such setting down for a hearing it shall not be amended in any material matters, as by adding new facts or defenses, or qualifying or altering the original statements, except by special leave of the court, or of a judge thereof, upon motion and cause shown, after due notice to the adverse party, supported, if required, by affidavit; and in every case where leave is so granted, the

court or the judge granting the same may, in his discretion, require that the same be separately engrossed, and added as a distinct amendment to the original answer, so as to be distinguishable therefrom.

RULE LXI.

Exceptions for insufficiency.— After an answer is filed on any rule day the plaintiff shall be allowed until the next succeeding rule day to file in the clerk's office exceptions thereto for insufficiency, and no longer, unless a longer time shall be allowed for the purpose, upon cause shown to the court, or a judge thereof; and, if no exception shall be filed thereto within that period, the answer shall be deemed and taken to be sufficient.

RULE LXII.

Costs of separate answers.— When the same solicitor is employed for two or more defendants, and separate answers shall be filed, or other proceedings had, by two or more of the defendants separately, costs shall not be allowed for such separate answers, or other proceedings, unless a master, upon reference to him, shall certify that such separate answers and other proceedings were necessary or proper, and ought not to have been joined together.

RULE LXIII.

Setting down exceptions for argument.— Where exceptions shall be filed to the answer for insufficiency, within the period prescribed by these rules, if the defendant shall not submit to the same and file an amended answer on the next succeeding rule day, the plaintiff shall forthwith set them down for a hearing on the next succeeding rule day thereafter, before a judge of the court, and shall enter, as of course, in the order book, an order for that purpose; and if he shall not so set down the same for a hearing, the exceptions shall be deemed abandoned, and the answer shall be deemed sufficient; provided, however, that the court, or any judge thereof, may,

for good cause shown, enlarge the time for filing exceptions, or for answering the same, in his discretion, upon such terms as he may deem reasonable.

RULE LXIV.

If exceptions sustained, further answer.— If, at the hearing, the exceptions shall be allowed, the defendant shall be bound to put in a full and complete answer thereto on the next succeeding rule day; otherwise the plaintiff shall, as of course, be entitled to take the bill, so far as the matter of such exceptions is concerned, as confessed, or, at his election, he may have a writ of attachment to compel the defendant to make a better answer to the matter of the exceptions; and the defendant, when he is in custody upon such writ, shall not be discharged therefrom but by an order of the court, or of a judge thereof, upon his putting in such answer, and complying with such other terms as the court or judge may direct.

RULE LXV.

Costs on exceptions.— If, upon argument, the plaintiff's exceptions to the answer shall be overruled, or the answer shall be adjudged insufficient, the prevailing party shall be entitled to all the costs occasioned thereby, unless otherwise directed by the court, or the judge thereof, at the hearing upon the exceptions.

RULE LXVI.

Replication.— Whenever the answer of the defendant shall not be excepted to, or shall be adjudged or deemed sufficient, the plaintiff shall file the general replication thereto on or before the next succeeding rule day thereafter; and in all cases where the general replication is filed, the cause shall be deemed, to all intents and purposes, at issue, without any rejoinder or other pleading on either side. If the plaintiff shall omit or refuse to file such replication within the prescribed period, the defendant shall be entitled to an order, as of course, for a dismissal of the suit; and the suit shall thereupon stand

dismissed, unless the court, or a judge thereof, shall, upon motion, for cause shown, allow a replication to be filed *nunc pro tunc*, the plaintiff submitting to speed the cause, and to such other terms as may be directed.

RULE LXVII

Testimony—How taken.—(1) After the cause is at issue, commissions to take testimony may be taken out in vacation as well as in term, jointly by both parties, or severally by either party, upon interrogatories filed by the party taking out the same in the clerk's office, ten days' notice thereof being given to the adverse party to file cross-interrogatories before the issuing of the commission; and if no cross-interrogatories are filed at the expiration of the time, the commission may issue *ex parte*. In all cases the commissioner or commissioners shall be named by the court or by a judge thereof. Ordered, that the sixty-seventh rule governing equity practice be so amended as to allow the presiding judge of any court exercising jurisdiction, either in term time or in vacation, to vest in the clerk of said court general power to name commissioners to take testimony in like manner that the court or judge thereof can now do by the said sixty-seventh rule.

(2) Either party may give notice to the other that he desires the evidence to be adduced in the cause to be taken orally, and thereupon all the witnesses to be examined shall be examined before one of the examiners of the court or before an examiner to be specially appointed by the court, the examiner to be furnished with a copy of the bill and answer, if any; and such examination shall take place in the presence of the parties or their agents, by their counsel or solicitors, and the witnesses shall be subject to cross-examination and re-examination, and which shall be conducted as near as may be in the mode now used in common-law courts. The depositions taken upon such oral examinations shall be taken down in writing by the examiner in the form of narrative, unless he determines the examination shall be by question and answer in special instances; and, when completed, shall be read over to the witness and

signed by him in the presence of the parties or counsel, or such of them as may attend; provided, if the witness shall refuse to sign the said deposition, then the examiner shall sign the same; and the examiner may, upon all examinations, state any special matters to the court as he shall think fit; and any question or questions which may be objected to shall be noted by the examiner upon the deposition, but he shall not have power to decide on the competency, materiality or relevancy of the questions; and the court shall have power to deal with the costs of incompetent, immaterial or irrelevant depositions, or parts of them, as may be just.

(3) In case of refusal of witnesses to attend, to be sworn, or to answer any question put by the examiner, or by counsel or solicitor, the same practice shall be adopted as is now practiced with respect to witnesses to be produced on examination before an examiner of said court on written interrogatories.

(4) Notice shall be given by the respective counsel or solicitors to the opposite counsel or solicitors, or parties, of the time and place of the examination, for such reasonable time as the examiner may fix by order in each cause.

(5) When the examination of witnesses before the examiner is concluded, the original deposition, authenticated by the signature of the examiner, shall be transmitted by him to the clerk of the court, to be there filed of record, in the same mode as prescribed in the thirtieth section of act of congress, September 24, 1789.

(6) Testimony may be taken on commission in the usual way, by written interrogatories and cross-interrogatories, on motion to the court in term time, or to a judge in vacation, for special reasons satisfactory to the court or judge.

(7) Where the evidence to be adduced in a cause is to be taken orally, as provided in the order passed at the December term, 1861, amending the sixty-seventh general rule, the court may, on motion of either party, assign a time within which the complainant shall take his evidence in support of the bill, and a time thereafter within which the defendant shall take his evidence in defense, and a time thereafter within which

the complainant shall take his evidence in reply; and no further evidence shall be taken in the cause, unless by agreement of the parties, or by leave of court first obtained, on motion, for cause shown.

RULE LXVIII.

Under acts of congress.—Testimony may also be taken in the cause, after it is at issue, by deposition, according to the acts of congress. But in such case, if no notice is given to the adverse party of the time and place of taking the deposition, he shall, upon motion and affidavit of the fact, be entitled to a cross-examination of the witness, either under a commission or by a new deposition taken under the acts of congress, if a court or judge thereof shall, under all the circumstances, deem it reasonable.

RULE LXIX.

Time for testimony.—Three months, and no more, shall be allowed for the taking of testimony after the cause is at issue, unless the court, or a judge thereof, shall, upon special cause shown by either party, enlarge the time; and no testimony taken after such period shall be allowed to be read in evidence at the hearing. Immediately upon the return of the commissions and depositions containing the testimony into the clerk's office, publication thereof may be ordered in the clerk's office, by any judge of the court, upon due notice to the parties, or it may be enlarged, as he may deem reasonable under all the circumstances; but, by consent of the parties, publication of the testimony may at any time pass into the clerk's office, such consent being in writing, and a copy thereof entered in the order books, or indorsed upon the deposition or testimony.

RULE LXX.

Infirm, single or about to depart.—After any bill filed, and before the defendant hath answered the same, upon affidavit made that any of plaintiff's witnesses are aged and infirm, or going out of the country, or that any one of them is a

single witness to a material fact, the clerk of the court shall, as of course, upon the application of the plaintiff, issue a commission to such commissioner or commissioners as a judge of the court may direct, to take the examination of such witness or witnesses *de bene esse*, upon giving due notice to the adverse party of the time and place of taking his testimony.

RULE LXXI.

Last interrogatory.—The last interrogatory in the written interrogatories to take testimony now commonly in use shall in the future be altered, and stated in substance thus: "Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer."

RULE LXXII.

Cross-bill — Answer to.—Where a defendant in equity files a cross-bill for discovery only against the plaintiff in the original bill, the defendant to the original bill shall first answer thereto before the original plaintiff shall be compellable to answer the cross-bill. The answer of the original plaintiff to such cross-bill may be read and used by the party filing the cross-bill at the hearing, in the same manner and under the same restrictions as the answer praying relief may now be read and used.

RULE LXXIII.

Account of estate.—Every decree for an account of the personal estate of a testator or intestate shall contain a direction to the master, to whom it is referred to take the same, to inquire and state to the court what parts, if any, of such personal estate are outstanding or undisposed of, unless the court shall otherwise direct.

RULE LXXIV.

Proceedings on reference.—Whenever any reference of any matter is made to a master to examine and report thereon, the party at whose instance or for whose benefit the reference was made shall cause the same to be presented to the master for hearing on or before the next rule day succeeding the time when the reference is made; if he shall omit to do so, the adverse party shall be at liberty forthwith to cause proceedings to be had before the master, at the costs of the party procuring the reference.

RULE LXXV.

Master, proceedings before.—Upon every such reference, it shall be the duty of the master, as soon as he reasonably can after the same is brought before him, to assign a time and place for proceedings in the same, and to give due notice thereof to each of the parties, or their solicitors; and if either party shall fail to appear at the time and place appointed the master shall be at liberty to proceed *ex parte*, or, in his discretion, to adjourn the examination and proceedings to a future day, giving notice to the absent party or his solicitor of such adjournment; and it shall be the duty of the master to proceed with all reasonable diligence in every such reference, and with the least practicable delay, and either party shall be at liberty to apply to the court, or a judge thereof, for an order to the master to speed the proceedings and to make his report, and to certify to the court or judge the reasons for any delay.

RULE LXXVI.

Master's report.—In the reports made by the master to the court, no part of any state of facts, charge, affidavit, deposition, examination or answer brought in or used before them shall be stated or recited. But such state of facts, charges, affidavits, deposition, examination or answer shall be identified, specified and referred to, so as to inform the court what state of facts, charge, affidavit, deposition or answer were so brought in or used.

RULE LXXVII.

Duty and power of master.—The master shall regulate all the proceedings in every hearing before him upon every such reference; and he shall have full authority to examine the parties in the cause, upon oath, touching all matters contained in the reference; and also to require the production of all books, papers, writings, vouchers and other documents applicable thereto; and also to examine on oath, *viva voce*, all witnesses produced by the parties before him, and to order the examination of other witnesses to be taken under a commission to be issued upon his certificate from the clerk's office or by deposition, according to the acts of congress, or otherwise, as hereinafter provided; and also to direct the mode in which the matters requiring evidence shall be proved before him; and generally to do all other acts, and direct all other inquiries and proceedings in the matters before him, which he may deem necessary and proper to the justice and merits thereof and the rights of the parties.

RULE LXXVIII.

Attendance of witnesses.—Witnesses who live within the district may, upon due notice to the opposite party, be summoned to appear before the commissioner appointed to take testimony, or before a master or examiner appointed in any cause, by subpoena in the usual form, which may be issued by the clerk in blank, and filled up by the party praying the same, or by the commissioner, master or examiner, requiring the attendance of the witnesses at the time and places specified, who shall be allowed for attendance the same compensation as for attendance in court; and if any witness shall refuse to appear or give evidence, it shall be deemed a contempt of the court, which being certified to the clerk's office by the commissioner, master or examiner, an attachment may issue thereupon by order of the court or of any judge thereof, in the same manner as if the contempt were for not attending, or for refusing to give testimony in the court. But nothing herein con-

tained shall prevent the examination of witnesses *viva voce* when produced in open court, if the court shall, in its discretion, deem it advisable.

RULE LXXIX.

Form of accounts.— All parties accounting before a master shall bring in their respective accounts in the form of debtor and creditor; and any of the other parties who shall not be satisfied with the accounts so brought in shall be at liberty to examine the accounting party *viva voce*, or upon interrogatories, in the master's office, or by deposition, as the master shall direct.

RULE LXXX.

What used before master.— All affidavits, depositions and documents which have been previously made, read or used in the court, upon any proceeding in any cause or matter, may be used before the master.

RULE LXXXI.

Who may be examined.— The master shall be at liberty to examine any creditor or other person coming in to claim before him, either upon written interrogatories or *viva voce*, or in both modes, as the nature of the case may appear to require. The evidence upon such examinations shall be taken down by the master, or by some other person by his order and in his presence, if either party requires it, in order that the same may be used by the court, if necessary.

RULE LXXXII.

Appointment—Fees.— The circuit courts may appoint standing masters in chancery in their respective districts, both the judges concurring in the appointment; and they may also appoint a master *pro hac vice* in any particular case. The compensation to be allowed to every master in chancery for his services in any particular case shall be fixed by the circuit court, in its discretion, having regard to all the circumstances.

thereof, and the compensation shall be charged upon and borne by such of the parties in the cause as the court shall direct. The master shall not retain his report as security for his compensation; but, when the compensation is allowed by the court, he shall be entitled to an attachment for the amount against the party who is ordered to pay the same, if, upon notice thereof, he does not pay it within the time prescribed by the court.

RULE LXXXIII.

Return and entry of master's report.—The master, as soon as his report is ready, shall return the same into the clerk's office, and the day of the return shall be entered by the clerk in the order book. The parties shall have one month from the time of filing the report to file exceptions thereto, and, if no exceptions are within that period filed by either party, the report shall stand confirmed on the next rule day after the month is expired. If exceptions are filed they shall stand for hearing before the court if the court is then in session, or, if not, then at the next sitting of the court which shall be held thereafter, by adjournment or otherwise.

RULE LXXXIV.

Costs on frivolous causes.—And, in order to prevent exceptions to reports from being filed for frivolous causes, or for mere delay, the party whose exceptions are overruled shall, for every exception overruled, pay costs to the other party, and for every exception allowed shall be entitled to costs; the costs to be fixed in each case by the court, by a standing rule of the circuit court.

RULE LXXXV.

Correction of decree.—Clerical mistakes in decrees or decretal orders, or errors arising from any accidental slip or omission, may, at any time before an actual enrollment thereof, be corrected by order of the court or a judge thereof, upon petition, without the form or expense of a rehearing.

RULE LXXXVI.

Decree, form of.—In drawing up decrees and orders, neither the bill, nor answer, nor other pleadings, nor any part thereof, nor the report of any master, nor any other prior proceeding, shall be recited or stated in the decree or order; but the decree and order shall begin, in substance, as follows: "This cause came on to be heard (or to be further heard, as the case may be) at this term, and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged and decreed as follows, viz.:" [Here insert the decree or order.]

RULE LXXXVII.

Suits by or against incompetents.—Guardians *ad litem* to defend a suit may be appointed by the court, or by any judge thereof, for infants or other persons who are under guardianship, or otherwise incapable to sue for themselves. All infants and other persons so incapable may sue by their guardians, if any, or by their *prochein ami*; subject, however, to such orders as the court may direct for them.

RULE LXXXVIII.

Rehearing.—Every petition for a rehearing shall contain the special matter or cause on which such rehearing is applied for, shall be signed by counsel, and the facts therein stated, if not apparent on the record, shall be verified by the oath of the party or by some other person. No rehearing shall be granted after the term at which the final decree of the court shall have been entered and recorded, if an appeal lies to the supreme court. But if no appeal lies, the petition may be admitted at any time before the end of the next term of the court in the discretion of the court.

RULE LXXXIX.

Rules by circuit court.—The circuit courts (both judges concurring therein) may make any other and further rules and

regulations for the practice, proceedings, and process, mesne and final, in their respective districts, not inconsistent with the rules hereby prescribed, in their discretion, and from time to time alter and amend the same.

RULE XC.

Rules of practice.—In all cases where the rules prescribed by this court or by the circuit court do not apply, the practice of the circuit court shall be regulated by the present practice of the high court of chancery in England, so far as the same may reasonably be applied consistently with the local circumstances and local conveniences of the district where the court is held, not as positive rules, but as furnishing just analogies to regulate the practice.

RULE XCI.

Affirmation.—Whenever, under these rules, an oath is or may be required to be taken, the party may, if conscientiously scrupulous of taking an oath, in lieu thereof make solemn affirmation to the truth of the facts stated by him.

RULE XCII.

Decree in foreclosure cases.—In suits in equity for the foreclosure of mortgages in the circuit court of the United States, or in any court of the Territories having jurisdiction of the same, a decree may be rendered for any balance that may be found due to the complainant over and above the proceeds of the sale or sales, and execution may issue for the collection of the same, as is provided in the eighth rule of this court regulating the equity practice, where the decree is solely for the payment of money.

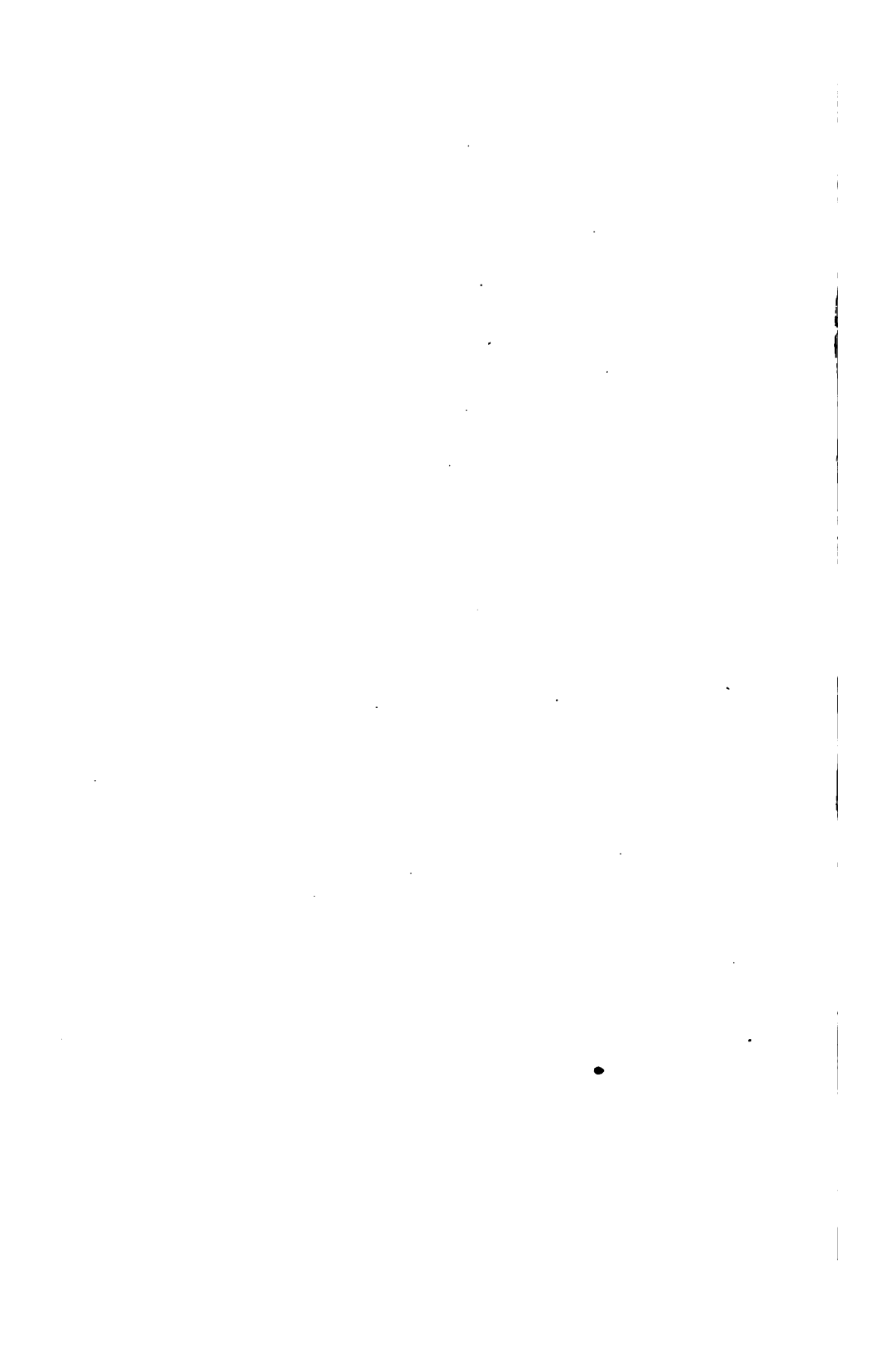
RULE XCIII.

Injunction — On appeal.—When an appeal from a final decree, in an equity suit, granting or dissolving an injunction, is allowed by a justice or judge who took part in the decision of the cause, he may, in his discretion, at the time of such al-

lowance, make an order suspending or modifying the injunction during the pendency of the appeal, upon such terms as to bond or otherwise as he may consider proper for the security of the rights of the opposite party.

RULE XCIV.

Bill by stockholder.— Every bill brought by one or more stockholders in a corporation, against the corporation and other parties, founded on rights which may properly be asserted by the corporation, must be verified by oath, and must contain an allegation that the plaintiff was a shareholder at the time of the transaction of which he complains, or that his share had devolved on him since, by operation of law, and that the suit is not a collusive one to confer on a court of the United States jurisdiction of a case of which it would not otherwise have cognizance. It must also set forth with particularity the efforts of the plaintiff to secure such action as he desires on the part of the managing directors or trustees, and, if necessary, of the shareholders, and the causes of his failure to obtain such action.



PORTIONS

OF

RULES OF SUPREME COURT.

RULE 8.

1. Return, how made.—The clerk of the court to which any writ of error may be directed shall make return of the same by transmitting a true copy of the record and of the assignment of errors and of all proceedings in the case under his hand and the seal of the court.

2. Opinions annexed to record.—In all cases brought to this court by writ of error or appeal, to review any judgment or decree, the clerk of the court by which such judgment or decree was rendered shall annex to and transmit with the record a copy of the opinion or opinions filed in the case.

3. What to be filed.—No case will be heard until a complete record, containing in itself, and not by reference, all the papers, exhibits, depositions and other proceedings which are necessary to the hearing in this court, shall be filed.

5. Writ, when returnable.—In cases where final judgment is rendered more than thirty days before the first day of the next term of this court, the writ of error and citation, if taken before, must be returnable on the first day of said term, and be served before that day; but in cases where the judgment is rendered less than thirty days before the first day, the writ of error and citation may be made returnable on the third Monday of the said term and be served before that day.

RULE 9.

1. Duties of parties.— In all cases where a writ of error or an appeal shall be brought to this court from any judgment or decree rendered thirty days before the commencement of the term, it shall be the duty of the plaintiff in error or appellant to docket the case and file the record thereof with the clerk of this court within the first six days of the term; and if the writ of error or appeal shall be brought from a judgment or decree rendered less than thirty days before the commencement of the term, it shall be the duty of the plaintiff in error or appellant to docket the case, and file the record thereof with the clerk of this court within the first thirty days of the term; and if the plaintiff in error or appellant shall fail to comply with this rule, the defendant in error or appellee may have the case docketed and dismissed upon producing a certificate from the clerk of the court wherein the judgment or decree was rendered, stating the case, and certifying that such writ of error or appeal has been duly sued out and allowed. And in no case shall the plaintiff in error or appellant be entitled to docket the case and file the record after the same shall have been docketed and dismissed under this rule, unless by order of the court.

2. Rights of appellee.— But the defendant in error or appellee may, at his option, docket the case and file a copy of the record with the clerk of the court; and if the case is docketed and a copy of the record filed with the clerk of this court by the plaintiff in error or appellant within the periods of time above limited and prescribed by this rule, or by the defendant in error or appellee at any time thereafter during the term, the case shall stand for argument at the term.

4. Time extended.— In all cases where the period of thirty days is mentioned in this rule, it shall be extended to sixty days in writs of appeals from California, Oregon, Nevada, Washington, New Mexico, Utah, Arizona, Montana and Idaho.

RULE 15.

1. Revivor.— Whenever, pending a writ of error or appeal in this court, either party shall die, the proper representatives in the personalty or realty of the deceased party, according to the nature of the case, may voluntarily come in and be admitted parties to the suit, and thereupon the case shall be heard and determined as in other cases; and if such representatives shall not voluntarily become parties, then the other party may suggest the death on the record, and thereupon, on motion, obtain an order that unless such representatives shall become parties within the first ten days of the ensuing term, the party moving for such order, if defendant in error, shall be entitled to have the writ of error or appeal dismissed, and if the party so moving shall be plaintiff in error he shall be entitled to open the record, and, on hearing, have the judgment or decree reversed if it be erroneous; *provided, however*, that a copy of every such order shall be printed in some newspaper of general circulation within the state, territory or district from which the case is brought for three successive weeks, at least sixty days before the beginning of the term of the supreme court then next ensuing.

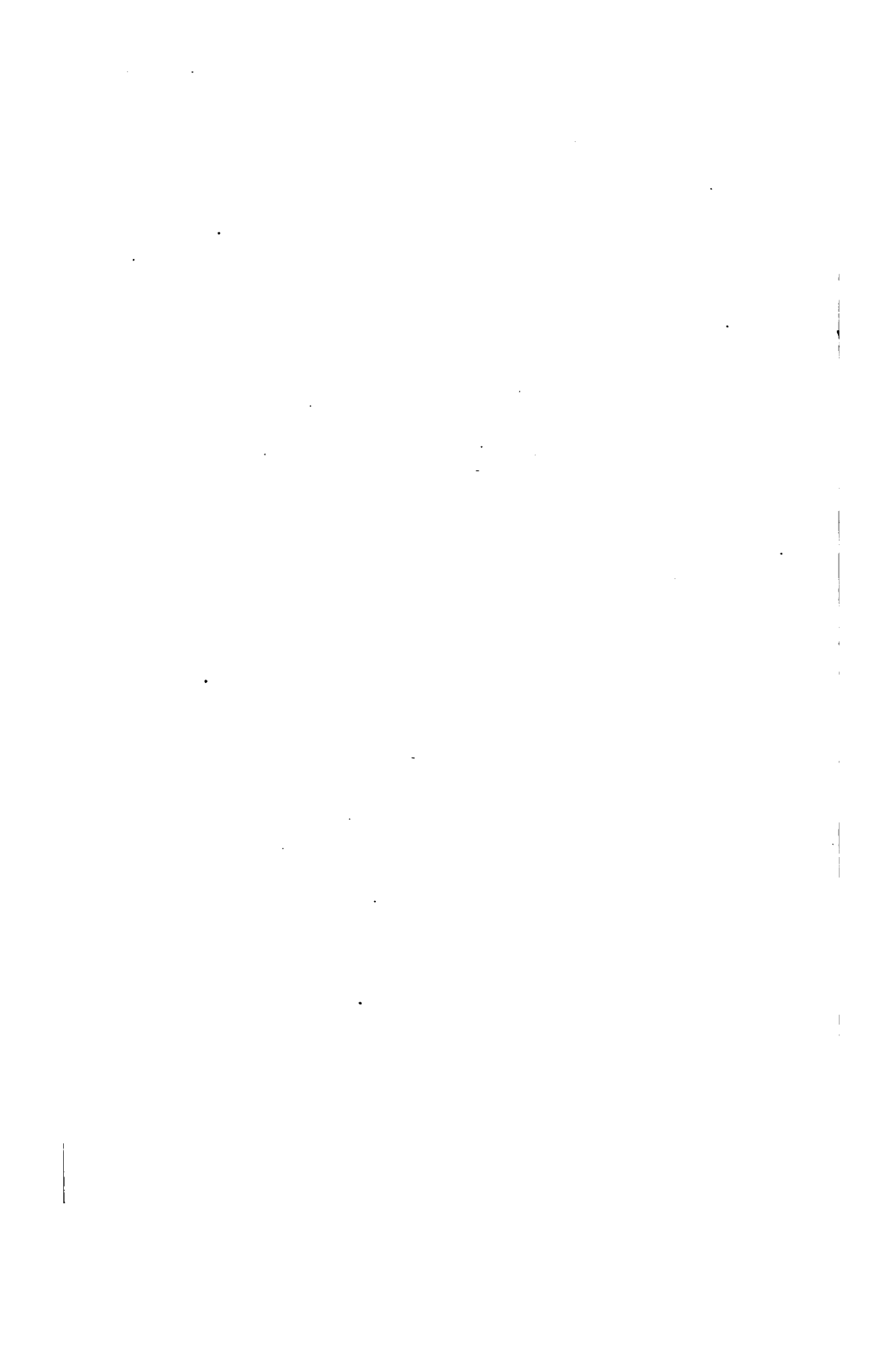
2. When action abates.— When the death of a party is suggested and the representatives of the deceased do not appear by the tenth day of the second term next succeeding the suggestion, and no measures are taken by the opposite party within that time to compel their appearance, the case shall abate.

3. Death at time of taking writ.— When either party to a suit in a circuit court of the United States shall desire to prosecute a writ of error or appeal to the supreme court of the United States from any final judgment or decree rendered in the circuit court, and at the time of suing out such writ of error or appeal the other party to the suit shall be dead and have no proper representative within the jurisdiction of the court which rendered such final judgment or decree, so that the suit cannot be revived in that court, but shall have a proper repre-

sentative in some state or territory of the United States, the party desiring such writ of error or appeal may procure the same, and may have proceedings on such judgment or decree superseded or stayed in the same manner as is now allowed by law in other cases, and shall thereupon proceed with such writ of error or appeal as in other cases. And within thirty days after the commencement of the term to which such writ of error or appeal is returnable, the plaintiff in error or appellant shall make a suggestion to the court, supported by affidavit, that the said party was dead when the writ of error or appeal was taken or sued out, and had no proper representative within the jurisdiction of the court which rendered said judgment or decree, so that the suit could not be revived in that court, and that said party had a proper representative in some state or territory of the United States, and stating therein the name and character of such representative, and the state or territory in which such representative resides; and, upon such suggestion, he may, on motion, obtain an order that, unless such representative shall make himself a party within the first ten days of the ensuing term of the court, the plaintiff in error or appellant shall be entitled to open the record, and, on hearing, have the judgment or decree reversed if the same be erroneous; *provided, however*, that a proper citation reciting the substance of such order shall be served upon such representative, either personally or by being left at his residence, at least sixty days before the beginning of the term of the supreme court then next ensuing; and *provided*, also, that in every such case, if the representative of the deceased party does not appear by the tenth day of the term next succeeding said suggestion, and the measures above provided to compel the appearance of such representative have not been taken within the time as above required by the opposite party, the case shall abate; and *provided*, also, that the said representative may, at any time before or after said suggestion, come in and be made a party to the suit, and thereupon the case shall proceed and be heard and determined as in other cases.

RULE 29.

Bond of indemnity.—*Supersedeas* bonds in the circuit courts must be taken with good and sufficient security that the plaintiff in error or appellant shall prosecute his writ or appeal to effect, and answer all damages and costs if he fail to make his plea good. Such indemnity, where the judgment or decree is for the recovery of money not otherwise secured, must be for the whole amount of the judgment or decree, including “just damages for delay,” and costs and interest on the appeal; but in all suits where the property in controversy necessarily follows the event of the suit, as in real actions, replevin, and in suits on mortgages; or where the property is in the custody of the marshal under admiralty process as in case of capture or seizure; or where the proceeds thereof, or a bond for the value thereof, is in the custody or control of the court, indemnity in all such cases is only required in an amount sufficient to secure the sum recovered for the use and detention of the property and the costs of the suit and “just damages for delay,” and costs and interest on the appeal.



FORMS.

BILL OF COMPLAINT.

In the United States Circuit Court in and for the — District of —. — Term, 18—.

A. B.	} Equity.
v.	
C. D. and E. F.	

To the Judges of the Circuit Court of the United States for the — District of —:

A. B., of —, and a citizen of the state of —, brings this his bill against C. D., of —, and a citizen of the state of —, and E. F., of —, and a citizen of the state of —, and thereupon your orator complains and says that, etc.

[*Here insert cause of action.*]

To the end that your orator may obtain the relief to which he is justly entitled in the premises, he now prays the court to grant him due process by subpoena directed to said C. D. and E. F., defendants hereinbefore named, requiring and commanding each of them to appear herein and answer under oath [*or, but not under oath, the same being expressly waived*] the several allegations in this your orator's bill contained.

And your orator further prays that upon the final hearing it be ordered and decreed that [*here insert the special relief sought*].

And further prays for such other and further relief as may be just and equitable.

X. Y.,
Of Counsel.

A. B.,
By X., Y. and Z.,
His Solicitors.

If a writ of *ne exeat* is desired the reasons for asking therefor should be set out immediately following the prayer for the process by subpoena, with the prayer —

Wherefore your orator prays the court to grant him a writ of *ne exeat* restraining and forbidding said C. D., defendant herein, from departing beyond the limits of the United States without leave of this court first had.

If an injunction is desired pending the trial, a prayer for the issuance thereof should be added immediately following the prayer for process.

If the grounds therefor have not already been fully set forth in the bill, the same should be set forth followed by the prayer —

Wherefore your orator prays the court to now grant him a writ of injunction restraining and enjoining the said defendants from [*here insert the special matters desired to be enjoined*], until the further order and decree of this court in the premises.

PRÆCIPE FOR PROCESS.

[*Entitle as before.*]

To Clerk of said Court:

In above cause, being a bill filed for [*here state briefly purpose of bill, as for foreclosure of mortgage, or to set aside conveyance of realty*], please issue a subpoena to C. D. and E. F., defendants, returnable on the rule day in [*here insert the name of month*].

X. Y.,

Solicitor for Complainant.

If for any reason it is desired to issue separate subpoenas the *præcipe* should so direct.

ENTRY OF APPEARANCE IN PERSON.

[*Entitle as before.*]

To Clerk of said Court:

Please enter my appearance as defendant in above cause on the — rule day [*or as of the date of the filing hereof*].

ENTRY OF APPEARANCE BY SOLICITOR.

[Entitle as before.]

To Clerk of said Court:

In above cause please enter the appearance of — —, defendant, and of myself as his solicitor, on the — rule day [or as of the date of the filing hereof].

GENERAL DEMURRER.

[Entitle case as before.]

The demurrer of C. D. and E. F., defendants.

These defendants, not confessing all or any of the matters in the bill of complaint contained to be true as therein set forth, do demur to said bill for that the same does not state such a case, nor contain any matter of equity, entitling the complainant to any relief against these defendants. Wherefore they pray the judgment of the court whether they shall be compelled to further answer said bill, and further pray to be dismissed with their costs.

— —.
— —.

I, — —, of counsel for the defendants in the above cause, do hereby certify that the foregoing demurrer to the bill of complaint is in my opinion well founded in law.

UNITED STATES OF AMERICA, }
District of —. }

I, — —, defendant in the above cause, being duly sworn, do say that the foregoing demurrer to the bill of complaint is not interposed for purposes of delay.

Subscribed and sworn to before me this — day of —.

— —.

SPECIAL DEMURRER TO BILL.

[Entitle case as before.]

The demurrer of C. D. and E. F., defendants.

These defendants, not confessing all or any of the matters and things in the bill of complaint contained to be true as therein alleged, do demur to said bill, and for cause thereof

showeth that, etc. [*here set forth specifically the grounds of demurrer*].

Wherefore they pray the judgment of the court whether they shall be compelled to further answer said bill. And further pray to be dismissed, with costs.

[*Add certificate and affidavit as before.*]

DEMURRER TO PART OF BILL.

[*Entitle case as before.*]

The demurrer of C. D. and E. F. to part of bill.

These defendants, not confessing all or any of the matters and things in the bill of complaint contained to be true as therein alleged, do demur to so much of said bill as [*here describe the part or parts of bill demurred to, and set forth the grounds of demurrer thereto*].

Wherefore defendants pray the judgment of the court whether they shall be compelled to further answer make to said parts of the bill herein demurred to.

[*Add certificate and affidavit as before.*]

PLEA TO BILL.

[*Entitle as before.*]

The plea of C. D. and E. F. to the bill of complaint.

These defendants, not confessing all or any of the matters in said bill of complaint to be true as therein alleged, for plea to said bill aver and say [*here set forth the matter of the plea*].

All of which matters and things these defendants do aver to be true, and plead the same in bar [*or, in abatement, as the case may be*] of complainant's said bill, and pray the judgment of the court whether they shall be compelled to further answer said bill, and pray to be hence dismissed with costs.

— — —.
— — —.

I, — — —, of counsel for defendants in above cause, do certify that the foregoing plea to the bill of complaint is in my opinion well founded in law.

UNITED STATES OF AMERICA, }
 District of ——. }

I, ———, defendant in the above cause, being duly sworn, do say that the foregoing plea to the bill of complaint is true in point of fact, and is not interposed for purposes of delay.

Subscribed and sworn to before me this ——— day of ———.

PLEA TO PART OF BILL.

[Entitle as before.]

The plea of C. D. and E. F., defendants, to part of said bill.

These defendants, not confessing all or any of the matters in said bill of complaint contained to be true as therein alleged, for plea to so much and such part of said bill as [*here describe part pleaded to*], aver and say that [*here set forth the matter of the plea*], all of which matters and things these defendants do aver to be true, and they plead the same to so much of said bill as is hereinbefore described, and pray the judgment of the court whether they shall be required to further answer so much of said bill as is covered by this plea.

[Add certificate and affidavit as before.]

DEMURRER, PLEA AND ANSWER IN ONE.

[Entitle as before.]

Demurrer, plea and answer of E. F. and C. D., defendants.

I. These defendants, not confessing all or any of the matters and things in said bill contained to be true as therein alleged, do demur to so much of said bill of complaint as [*here describe parts of bill to which the demurrer applies*], and for cause of demurrer do show that [*here set forth grounds of demurrer*].

Wherefore they pray judgment of this court whether they shall be required to further answer the parts of said bill demurred to.

II. And the said defendants, not waiving the foregoing demurrer, but wholly relying thereon, as to so much of said bill as [*here insert description of parts of bill to which plea is interposed*], do plead thereto, and for cause thereof do aver and

say that [*here set forth the grounds of plea*]. All of which matters the said defendants do plead to so much of said bill as is herein last above mentioned, and pray the judgment of this court whether they shall be compelled to further answer said parts of said bill thus pleaded to.

III. And the said defendants, not waiving their said demurrer and plea, but relying thereon, for answer to so much of said bill as they are advised it is material and necessary to answer unto, do say that [*here set forth the matters necessary to be stated in response to the bill, as well as matters of defense*].

Wherefore these defendants pray to be hence dismissed with costs.

[*Add certificate and affidavit as to demurrer and plea.*]

ANSWER TO BILL.

[*Entitle as before.*]

The answer of C. D. and E. F., defendants to the bill of complaint.

These defendants, saving and reserving unto themselves the benefit of all exceptions to the errors and imperfections in said bill contained, for answer to so much thereof as they are advised it is necessary or material for them to answer unto, do aver and say that [*here insert the matters responsive to the bill, as well as the matters of defense*].

And having thus fully made answer to said bill, these defendants pray to be hence dismissed with costs.

UNITED STATES OF AMERICA, {
District of ———.

We, ——— and ———, defendants in above cause, having read the foregoing answer, and being each duly sworn, do say that the matters and things in said answer contained are true.

Subscribed and sworn to before me this ——— day of ———.

—————.

EXCEPTIONS FOR SCANDAL OR IMPERTINENCE.

[Entitle as before.]

Exceptions taken to the bill [or answer] in said cause filed for expunging the scandalous [or impertinent] matter therein contained.

Complainant [or defendant] excepts to so much of said bill [or answer] as is included within [here describe the passages or parts excepted to], for that the same is scandalous [or impertinent], for which reason the complainant [or defendant] excepts to said bill [or answer], and prays that such scandalous [or impertinent] matter be expunged therefrom.

X. Y.,

Solicitor for —.

EXCEPTIONS TO ANSWER FOR INSUFFICIENCY.

[Entitle as before.]

Exceptions for insufficiency to the answer of C. D. and E. F., defendants in above cause.

Complainant excepts to the answer of said defendants herein filed [or to so much of said answer, describing same] for insufficiency, for that [here insert the grounds of exception]. For which reasons the said answer is insufficient and incomplete and ought to be amended, and complainant prays that the same be amended accordingly.

REPLICATION TO ANSWER.

[Entitle as before.]

Replication of complainant in above cause to the answer of C. D. and E. F., defendants.

This replicant, saving and reserving all advantage of exception to the manifold insufficiencies of said answer, for replication thereto saith that he will aver and prove his said bill to be true and sufficient, and that the said answer is untrue and insufficient; wherefore he prays relief as in said bill set forth.

PRÆCIPLE FOR SUBPŒNA TO WITNESS.

[Entitle as before.]

To Clerk of said Court:

In above entitled cause in equity please issue subpoena to F. G., a witness on behalf of —, directing him to appear and testify before — —, commissioner, at —, on the —.

X. Y.,

Solicitor for —.

PRÆCIPLE FOR COMMISSION ON INTERROGATORIES.

[Entitle as before.]

To Clerk of said Court:

In above entitled cause in equity please select some proper person as commissioner and issue a *dedimus* to him authorizing him to take the testimony of F. G. and H. K., upon the interrogatories filed in your office for that purpose. Witnesses reside at —.

X. Y.,

Solicitor for —.

PRÆCIPLE FOR SETTING DOWN CAUSE FOR ARGUMENT OR HEARING.

[Entitle as before.]

To Clerk of said Court:

In above cause set down for argument demurrer [or, plea] filed to the bill.

Set down above cause for argument on defendant's objection for want of parties.

Set down above cause for hearing on bill and answer.

Set down above cause for hearing on pleadings and proofs.

PETITION FOR APPEAL.

[Entitle as before.]

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner, the — in the above entitled cause, would respectfully represent and show that in the above entitled

cause pending in the United States circuit court in and for the — district of —, there was entered at the — term, 18—, of said court, a final decree greatly to the prejudice and injury of your petitioner, which said decree is erroneous and inequitable in many particulars.

Wherefore, in order that your petitioner may obtain relief in the premises, and have opportunity to show the errors complained of, your petitioner prays that he may be allowed an appeal in said cause to this honorable court, and that the proper orders touching the security required of him may be made.

CITATION.

UNITED STATES OF AMERICA, To — —:

You are hereby notified that in a certain cause in equity in the United States circuit court for the — district of —, wherein — — is complainant and — — and — — defendants, the — therein has prayed an appeal to the supreme court of the United States from the decree in said cause entered, and that such appeal has been allowed; wherefore you are hereby cited and admonished to be and appear at a supreme court of the United States to be holden at Washington, commencing on the second Monday of October next, to show cause, if any there be, why the decree appealed from should not be reversed and set aside, and relief be granted to said appellant as by him prayed, and as to justice and equity may appertain.

Witness the honorable — —, chief justice of the supreme court of the United States, this — day of — 18—.

— —,
Judge.

BILL OF REVIVOR.

[*Entitle as before.*]

To — —, the Judges of said Court:

Complainant herein avers and shows to this honorable court that since the beginning of this suit [*here insert event that has*

caused the abatement and necessity of reviving the cause, as the death of party, and set forth who are the representatives, heirs or others against whom it is sought to revive].

Wherefore, by reason of the premises, this suit has become abated; and to revive and further proceed therewith it has become necessary to make said — — and — — parties hereto, to which end complainant prays that process by subpoena may be issued to said — — and — — requiring them to appear and show cause why said suit should not be revived against them and they be required to abide the orders and decree of the court in the premises.

BILL OF REVIEW FOR ERRORS ON FACE OF RECORD.

[Entitle as before.]

— — — }
 — — — } Bill of review on behalf of — — — .
 — — — }

To the Judges of said Court:

Complainant herein avers and shows that in a certain suit entitled as above, and brought in this court to the — — term, 18—, thereof, this complainant was defendant [or, complainant] therein, and that at the — — term, 18—, of said court, upon a hearing therein, a final decree was entered in said cause greatly to the prejudice and injury of your complainant, which said decree is entered at large upon the records of this court, and to which reference is prayed. And complainant avers and says that said decree so entered is upon the face of the record erroneous for that [*here set forth the particular matters in which error is alleged, and show how such alleged errors prejudice complainant*].

Wherefore, as said errors appear on the face of the record, and are greatly prejudicial to complainant and his rights in the premises, complainant prays that said decree may be reviewed, reversed and set aside. And to that end complainant prays process by subpoena against — — requiring him to appear and answer hereto and show cause, if he may, why

said decree should not be reviewed, reversed and set aside, and such further orders and decrees be made as to the court may seem just.

BILL OF REVIEW ON GROUND OF NEW MATTER.

[Entitle as before.]

____ }
 — } Bill of review on behalf of _____.
 ____ }

To the Judges of said Court:

Complainant avers and shows that in a certain suit entitled as above, and brought in this court to the — term, 18—, thereof, this complainant was defendant [or, complainant] therein, and that at the — term, 18—, of said court, upon a hearing therein, a final decree therein was entered in said cause greatly to the prejudice and injury of this complainant, which said decree is entered at large upon the records of this court and to which reference is prayed.

And this complainant avers and says that lately and since the entry of said final decree aforesaid he hath discovered that [here set forth the new matter or the new evidence relied on as ground of review, with proper averments to show its materiality, and also show that the party was not in fault in not introducing such matter at the hearing].

Wherefore, for said causes alleged, said decree should be reviewed, reversed and set aside; and to the end that complainant may be permitted to show and prove the matters aforesaid, complainant prays process by subpoena against —, requiring him to appear hereto and due answer make, and that upon the hearing hereof the said decree may be reviewed, reversed and set aside, and such other and further orders and decree be made as may to the court seem proper.

UNITED STATES OF AMERICA, }
 District of ____.

I, —, being duly sworn, do say that I am complainant in the foregoing bill of review, that I have read the same, and that the matters and things therein set forth are true.

Subscribed and sworn to before me this — day of —.

_____.

WRIT OF NE EXEAT.

[Entitle as before.]

THE PRESIDENT OF THE UNITED STATES, To ———, the United States Marshal in and for District of ———:

Whereas in the above entitled cause in equity now pending in the United States circuit court in and for the ——— district of ———, it has been made to appear by satisfactory proof to the said court [or, to the circuit justice or judge] that ———, defendant in said cause, is equitably indebted to the complainant, and that the said ———, defendant, designs quickly to depart from the United States, and thereby defeat the remedy sought by complainant and greatly to prejudice the rights of said complainant:

Therefore you are hereby ordered and commanded that without delay you cause the said ——— to give good and sufficient bail or security in the sum of ——— dollars, to be by you approved, that he will not depart beyond the limits of the United States without leave of this court first had; and in case said ———, defendant, fails to give bail or security as aforesaid, you are commanded to keep him in custody until the further order of court or until he gives the bail or security above required.

Witness the honorable ———, chief justice of the supreme court of the United States, this ——— day of ———, 18—, and the seal of said circuit court in and for the ——— district of ———.

———, Clerk.

WRIT OF SEQUESTRATION.

[Entitle as before.]

THE PRESIDENT OF THE UNITED STATES, To ———:

Whereas, in the above entitled cause in equity, pending in the United States circuit court in and for the ——— district of ———, it was, on the ——— day of ———, ordered and decreed that ———, defendant, should [*here briefly state requirement of the order or decree*]. And it now appearing that the said ———, defendant, has wholly failed to obey and perform such

order and decree, and that for such failure a writ of attachment has been hitherto duly issued from the clerk's office of this court for the attachment of the person of said defendant, but that said writ has been returned by the marshal of this district unserved for the reason that said defendant cannot be found within the jurisdiction of this court, and that for cause shown a writ of sequestration has been ordered to issue for the seizure of the estate of said — —, defendant, for the purpose of compelling obedience on his part to said order and decree hereinbefore mentioned:

Now, therefore, know ye that, having confidence in your prudence and fidelity, you are hereby authorized, empowered and commanded to seize and take possession of [*here describe the estate, or portion of it, to be seized, as the real and personal estate of said — — within — —, or certain realty or personalty*], and the rents and profits of said realty to collect and receive, and possession of said personalty to take and keep until the further order of the court in the premises.

Witness the honorable — —, chief justice of the supreme court of the United States, this — day of —, with the seal of said United States circuit court in and for — district of —.

RESTRAINING ORDER PENDING APPLICATION FOR INJUNCTION.

[*Entitle as before.*]

Whereas, in the above cause, a motion for the issuance of a preliminary writ of injunction has been duly filed, the hearing thereof being fixed for the — day of —, 18—; and it having been made to appear that there is danger of irreparable injury being caused to complainant, before the hearing of said application for the writ of injunction, unless the said defendants are, pending such hearing, restrained as herein set forth, therefore complainant's application for such restraining order is granted [*if security is required, then add, upon his giving good security in the sum of —, for making good to the de-*

defendants the damages and costs that may be awarded them by reason of the granting of this order]:

Now, therefore, take notice that you, — — and — —, defendants herein, your agents, servants and attorneys, and each of you, are hereby specially restrained and enjoined from [*here insert the act or acts sought to be restrained*], until the hearing upon said application for a writ of injunction and the further order of the court in the premises.

— —, Judge.

ORDER GRANTING PRELIMINARY INJUNCTION.

[*Entitle as before.*]

Whereas, in the above entitled cause, an application for the issuance of a preliminary writ of injunction was duly filed and set down for hearing before the court [*or, before the Honorable G. H., a judge of said court*] on the — day of —, 18—, at —, notice of such application being given to — — and — —, defendants herein; and the parties now appearing by their solicitors and being heard upon such application, and it appearing that cause exists for the granting a writ of injunction, pending the final hearing of the cause, as prayed for:

It is therefore ordered that upon the complainant giving security, by bond, in the sum of —, conditioned that [*here insert the proper conditions*], a writ of injunction issue commanding, restraining and enjoining the defendants, their agents, servants and attorneys, from [*here set forth the special matter sought to be enjoined*], until the further order of the court in the premises.

WRIT OF PRELIMINARY INJUNCTION.

[*Entitle as before.*]

THE PRESIDENT OF THE UNITED STATES, To — — and — —:

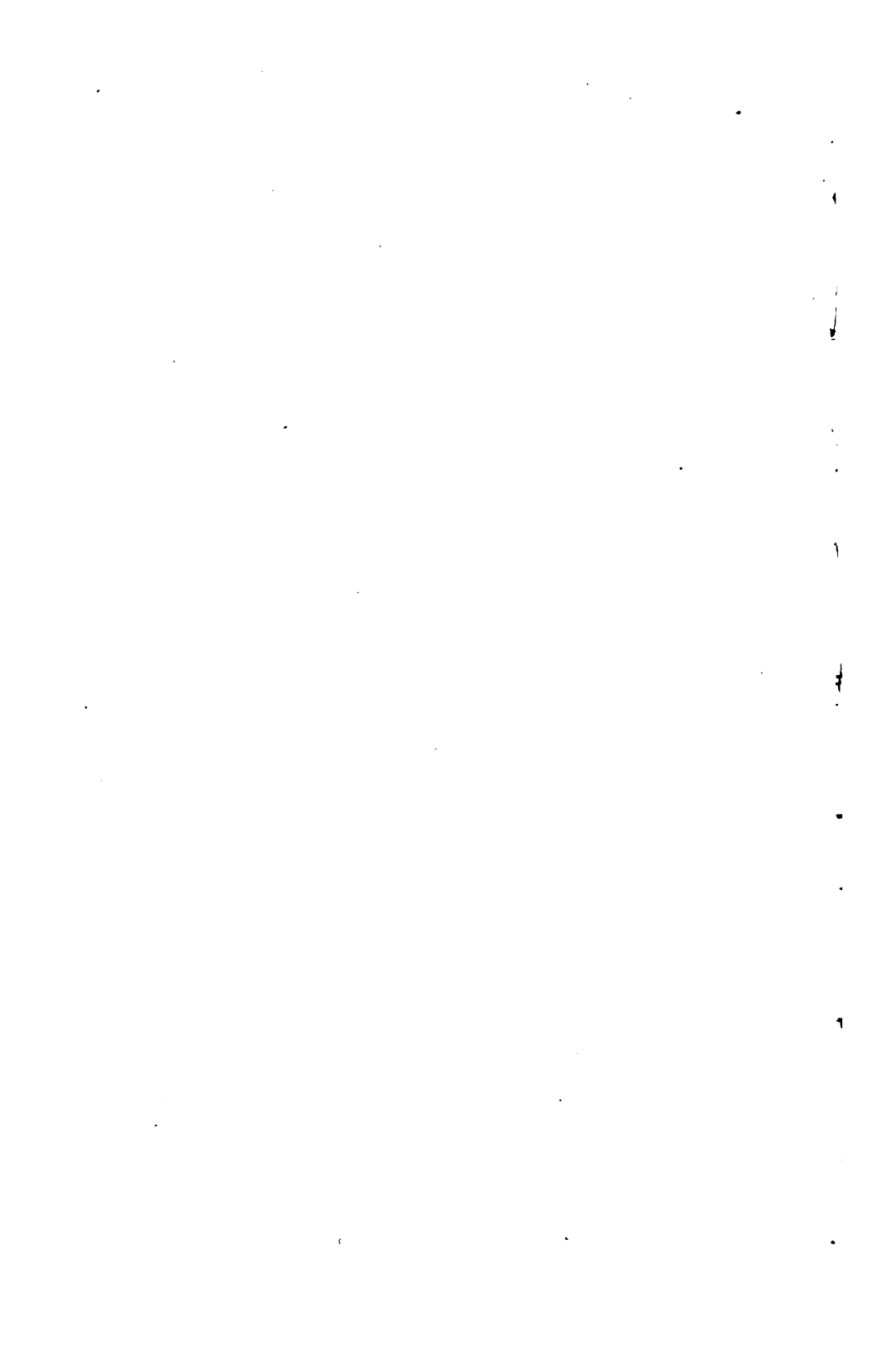
Whereas, in the above entitled cause, now pending in said United States circuit court in and for the — district of —, upon application duly made to the court [*or if to the judge, so*

state, giving his name], it was on the — day of —, 18—, ordered that a preliminary writ of injunction issue therein as prayed for in the bill of complaint herein filed and as directed in said order:

Now, therefore, know ye, that you, — — and — —, your agents, servants and attorneys, and each of you, are hereby strictly restrained and enjoined from [*here set forth clearly the act or acts sought to be restrained*], and you and each of you are hereby commanded that you do desist and refrain from doing or causing to be done all or any of the acts and things hereinabove recited and set forth, until the further order of the court in the premises.

Witness the Honorable — —, chief justice of the supreme court of the United States, this — day of —, and the seal of said circuit court in and for the — district of —.

— —, Clerk.



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In the column headed "Rules" the reference is to the Rules in Equity, by their number, save when the number is preceded by the letters S. C., in which case the reference is to the Rules of the Supreme Court. All the rules thus referred to will be found on pages 85-123 of the book.

In the column headed "Statutes," the reference is to the sections of the Revised Statutes, save when preceded by "Sts.," in which cases the reference is to volume and page of the Statutes at Large.

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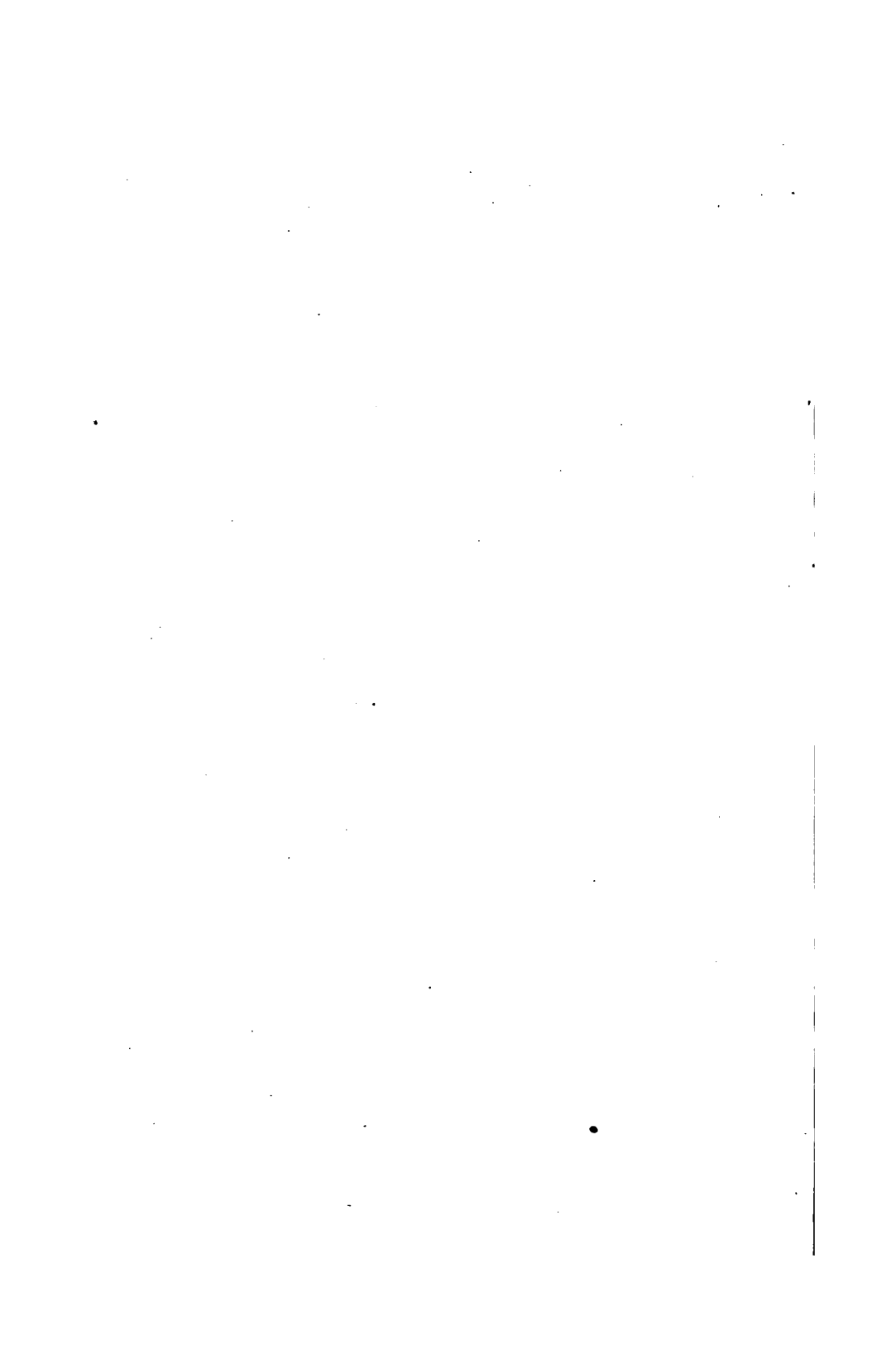
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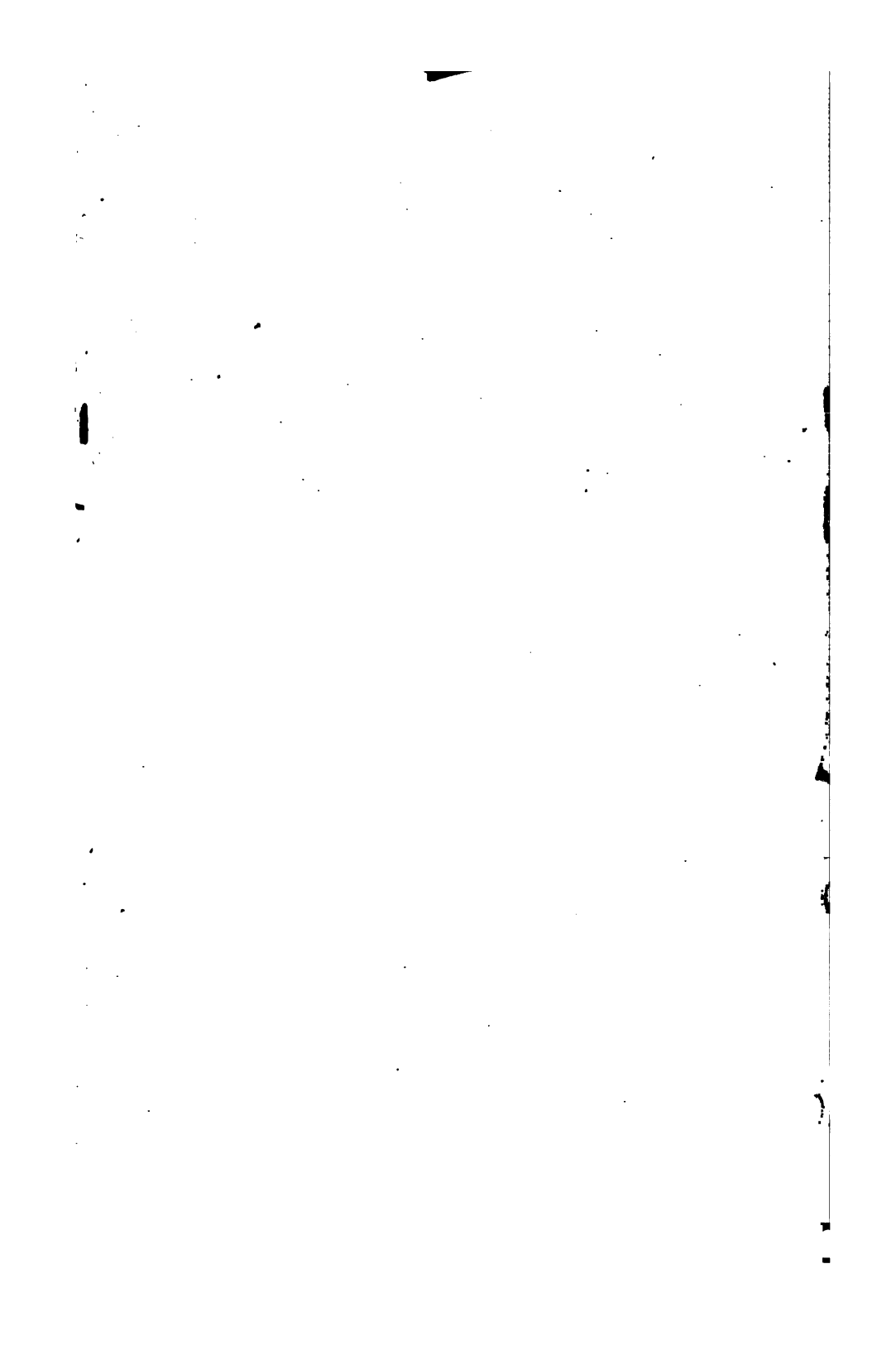
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